

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Alvarado, Antonio
 (Last) (First) (Initial)
 Prisoner Number C-09142
 Institutional Address Correctional Training Facility, P.O. Box 89,
Soledad, CA. 93960-0689

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ANTONIO ALVARADO

(Enter the full name of plaintiff in this action.)

vs.

Ben Curry, Warden

(Enter the full name of respondent(s) or jailor in this action)

CV

08

Case No. 2423
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

JF

(PR)

Read Comments Carefully Before Filing In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Antonio Alavardo, C-09142
Correctional Training Facility
P.O. Box 689 / East Dorm 134-Low
Soledad, CA. 93960-0689

Dated this 28 day of April, 2008

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division
450 Golden Gate Ave.
San Francisco, CA.
94102-3483

Re: PETITION FOR WRIT OF HABEAS CORPUS.


Dear Clerk of the Court,

Enclosed please find a true copy of petitioner's PETITION
FOR WRIT OF HABEAS CORPUS, to be filed in your court.

Enclosed as well please find a copy of the cover/caption
sheet of my copy of this PETITION FOR WRIT OF HABEAS CORPUS to be
stamped "FILED" and returned in the S.A.S.E. I've provided.

Thank you for your attention to these matters. Your help is
greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Antonio Alvarado', written over a horizontal line.

Antonio Alvarado, C-09142

Petitioner in Pro Se

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda

County Superior Court, Oakland):

SUPERIOR COURT

SANTA CLARA COUNTY

Court

Location

(b) Case number, if known 67828

(c) Date and terms of sentence 9/13/79, 27 Years to Life

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes XXX No

Where?

Name of Institution: C.T.F. Soledad

Address: P.O.Box 689, Soledad, CA. 93960-0689

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)
P.C. §§192.1/12022(b)/187/12022.5

3. Did you have any of the following?

Yes XXX No

Yes XXX No

Yes _____ No _____

4. How did you plead?

Guilty _____ Not Guilty XXX Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury XXX Judge alone _____ Judge alone on a transcript _____

Yes XXX No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes XXX No

(b) Preliminary hearing Yes XXX No

(c) Time of plea Yes xxx No

(d) Trial Yes XXX No

(e) Sentencing Yes XXX No

(f) Appeal Yes _____ No XXX

(g) Other post-conviction proceeding Yes _____ No XXX

Yes _____ No XXX

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes _____ No _____

Year: _____ Result: _____

Supreme Court of California Yes _____ No _____

Year: _____ Result: _____

Any other court Yes _____ No _____

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No _____

(c) Was there an opinion? Yes _____ No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No _____

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes _____ No XXX

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

II. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

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a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

III. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):
a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

IV. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):
a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?
Yes _____ No _____

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: (See attached Petition For Writ of Habeas Corpus)

6 _____

7 Supporting Facts: _____

8 _____

9 _____

10 _____

11 Claim Two: _____

12 _____

13 Supporting Facts: _____

14 _____

15 _____

16 _____

17 Claim Three: _____

18 _____

19 Supporting Facts: _____

20 _____

21 _____

22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 _____

26 _____

27 _____

28 _____

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 (SEE ATTACHED POINTS AND AUTHORITIES)
5
6

7 Do you have an attorney for this petition?

Yes _____ No XXX


8 If you do, give the name and address of your attorney:
9

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

4-18-08

14 Date



Signature of Petitioner

15
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20 (Rev. 6/02)

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POINTS AND AUTHORITIES

Name/Title

In re Bramble

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People v. Stuart

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(1944) Cal.2d 575, 581 [2] 150 P.2d 401

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In re Elkins
(2006) 144 Cal.App.4th 475, 487

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§8(b)

MEMORANDUM OF POINTS AND AUTHORITIES

PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONALLY AND STATUTORILY PROTECTED RIGHT TO THE LIBERTY INTEREST IN THE EXPECTATION OF PAROLE UNDER PENAL CODE §3041(b) WHICH ATTACHED AT THE TIME OF INCARCERATION.

The due process clause of the 5th and 14th Amendment prohibits a state action that deprives a person of life, liberty or property without due process.

However, a person alleging such a violation must establish that (a), he had protection; (b) that he was deprived of such a protection; and, (c) that the procedure which led to the deprivation was constitutionally deficient. Kentucky Dept. of Corrections v. Thomas, 490 U.S. 459-460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989); McQuillion v. Duncan, 306 F.3d 895, 900 (9th Cir. 2002).

A. EXISTENCE OF A LIBERTY INTEREST.

The Supreme Court held in 1979, and reiterated in 1987 that, "a state's statutory scheme, if it uses mandatory language, creates a presumption that parole release will be granted when or unless certain designated findings are made, and then, thereby, gives rise to a constitutionally protected 'Liberty Interest'". McQuillion v. Duncan, supra, 306 F.3d at 901, (citing Greenholtz v. Nebraska Penal Institute, 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979) and Board of Pardons v. Allen, 482 U.S. 369, 373, 107 S.Ct. 2415, 96 L.Ed.2d 303 (1987)).

Recently, our Ninth Circuit has "held" that California's parole scheme created such a liberty interest because Penal Code §3041 uses mandatory language and is similar to the Nebraska and Montana statutes addressed in Greenholtz, supra, and

1 Allen, supra. (See McQuillion, supra, 306 F.3d at 901-901).

2 Not only did the Ninth Circuit hold that "Section 3041 of
3 the Penal Code creates in every inmate a cognizable liberty
4 interest in parole which is protected by the procedural
5 safeguards of the due process clause," but further held that
6 "the interest arises upon the incarceration of the inmate."
7 Biggs v. Terhune, 334 F.3d 910, 914-915 (9th Cir. 2003).

8 Two United States Supreme Court decisions, Greenholtz v.
9 Inmates of Nebraska Penal and Correctional Complex, (1979) 442
10 U.S. 1, 12, decided in 1979 and Board of Pardons v. Allen,
11 (1987) 482 U.S. 369, 381, decided in 1987, held the Federal Due
12 Process Clause creates a constitutional liberty interest for
13 convicted persons in certain jurisdictions. The existence of
14 this right depends on whether the state employs "mandatory
15 language" indicating parole will be granted if certain findings
16 are made, Board of Pardons v. Allen, supra, 482 U.S. at pages
17 377-381. In 2002 the Ninth Circuit examined the California
18 parole scheme in McQuillion v. Duncan, (9th Cir. 2002) 306 F.3d
19 895 and found it "uses mandatory language and is largely
20 parallel to the schemes found in Greenholtz and Allen,"
21 McQuillion v. Duncan, supra, 306 F.3d at page 901. Accordingly,
22 the McQuillion court found a "liberty interest" was created under
23 the federal constitution for state prisoners in California,
24 McQuillion v. Duncan, supra, 306 F.3d at page 901.

25 While it is true post McQuillion, the California Supreme
26 Court had occasion to visit and decide in In re Dannenberg that
27 "life" prisoners did not have a liberty interest in the
28 expectation that the Board of Parole Hearings would engage in

1 "uniform term" analysis under Penal Code §3041(a) if it
2 demonstrated that public safety warranted denial of parole under
3 §3041(b). That court did not hold, however, that there is no
4 protected liberty interest in parole whatsoever. Indeed,
5 California courts have continued to analyze such claims. See In
6 re Shaputis, 135 Cal. App. 4th, 217, 224, 231-232, Cal.Rptr.3d
7 324 (citing Dannenberg); In re Scott, 133 Cal.App.4th 573, 34
8 Cal.Rptr.3d 905 (2005); In re Lee, 49 Cal.Rptr.3d 931; In re
9 Elkins, 50 Cal.Rptr.3d 503; In re Lawrence, (May 22, 2007),
10 Cal.Rptr.3d WL1475283. Post Dannenberg, even federal courts have
11 uniformly, save one District court decision (Eastern District of
12 California), which seemingly reversed itself in its very next
13 case, [see Sass v. California Board of Prison Terms, 376
14 F.Supp.2d, 975, 982 (E.D. Cal. 2005), which was recently
15 overruled by the Ninth Circuit in Sass v. Board of Prison Terms
16 376 F.Supp.2d, 975, 982, (9th Cir. 2006), and is currently under
17 appeal. (See and compare Sass, supra, to Bair v. Folsom State
18 Prison, 2005 WL2219110 fn.3 (E.D. Cal. 2005), Report and
19 Recommendations adopted by 2005 WL3081634 fn.1 (E.D. Cal.
20 2005).], have followed the reasoning in McQuillion, supra,
21 establishing a liberty interest. Because the Ninth Circuit
22 analyzed the liberty interest which arose from California's
23 Penal Code §3041(a), Dannenberg does not undermine the Ninth
24 Circuit decision in McQuillion. Therefore, McQuillion v. Duncan
25 holds that the mandatory language of Penal Code §3041(b)
26 creating a liberty interest in parole remains controlling
27 precedent. [See Rosenkrantz v. Marshall, 774 F.Supp.2d 1063
28 (C.D. Cal. 2006); Blankenship v. Kane, 2006 WL5215627 *3 (N.D.

1 Cal. 2006); Murille v. Perez, 2005 W.2592420 *3 N.1 (C.D. Cal.
2 2005); Saifullah v. Carey, 2005 WL1555389 *8 (E.D. Cal. 2005)].

3 Thus, petitioner has clearly established not only that he
4 has a constitutionally protected liberty interest but that he
5 was denied this liberty by the denial of parole by the Board of
6 Parole Hearings on May 31, 2007.

7 B. PROCEDURES WHICH LED TO DEPRIVATION OF LIBERTY.

8 It is established principles of due process that a prisoner
9 must provided notice of the hearings; and opportunity to be
10 heard; and, statement of reasons, for denial of parole.

11 Petitioner agrees that he was provided each of these
12 protections. However, the United States Supreme Court has
13 expanded these protections to include:

14 "In a variety of contexts, the court has
15 recognized decisions resulting in a loss of an
16 important liberty interest violates due process
17 if the decision is not supported by some
18 evidence." Superintendent v. Hill, 472 U.S. at
455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356
(1985); Rosenkrantz v. Marshall, 444 F.Supp.2d
1063 (C.D. Cal. 2006) fn. 13; Rojas v. Neilson,
428 F.3d 1229, 1232 (9th Cir. 2005)[Per curiam]

19 The court further held:

20 "Although '[T]he some evidence standard is
21 minimally stringent', Powell v. Gomez, 33 F.3d
22 39, 40, the evidence underlying the
23 [Governor's] decision must have some indicia of
reliability." Hill, supra, 472 U.S. at 455-56,
105 S.Ct. at 2774; See also Sanchez v. Kane,
444 F.Supp.2d 1049 (C.D. Cal. 2006).

24 As an additional matter the Hill court concluded that the
25 decision to deny parole must not be "otherwise arbitrary." Hill,
26 supra, at 547.

27 Clearly then, the Hill analysis determined that due process
28 requires much more than notice, opportunity to be heard and

1 statement of reason. It also requires (A). evidence which
2 supports the conclusion; (B). the evidence to be reliably
3 related to the issue of present dangerousness (CCR Title 15,
4 §2402(a)); In re Scott, supra, 1373 Cal.App.4th 593, 34
5 Cal.Rptr.3d 905; In re Elkins, 50 Cal.Rptr.3d 503; In re Lee, 49
6 Cal.Rptr.3d 931; (C). the evidence must be truthful and (D). the
7 decision must not be arbitrary or capricious. Sanchez v. Kane,
8 444 F.Supp.2d 1049 (C.D. Cal. 2006).

9 GROUND ONE:

10 THE BOARD'S DECISION TO DENY PAROLE IS
11 OTHERWISE ARBITRARY AND IS NOT SUPPORTED BY
12 "SOME EVIDENCE" CONTAINING AN INDICIA OF
RELIABILITY.

13 In combining the California and federal standards of
14 review, as they have been articulated thus far by the California
15 Supreme Court and the Ninth Circuit, respectively, the
16 commitment crime can lack the power to supply "some evidence"
17 supporting a denial of parole because of the interplay between
18 two factors - the nature of that crime and the passage of time
19 since its commission. That is, the fact there is "some evidence"
20 the crime was committed and committed a certain way at a certain
21 time does not mean that crime necessarily represents "some
22 evidence", that petitioner's release on parole will pose an
23 unreasonable risk of danger to the public safety at the present
24 time. Whether it possesses the necessary predictive value
25 depends both on the nature of the crime and how long ago it
26 happened. Petitioner's commitment offense, now over 30 years in
27 the past does not provide "some evidence" his present release
28 would represent an "unreasonable risk" of danger to the

1 community.

2 It is worth noting that the issue before this court is
3 whether petitioner is suitable for parole, not when he should be
4 released under the California parole system. The Board's initial
5 task with respect to any inmate serving an indeterminate
6 sentence is to determine whether the prisoner is suitable for
7 parole. That is whether the prisoner "pose[s] an unreasonable
8 risk of danger to society if released from prison. CCR, Title 15
9 §2402." Only after the Board deems an inmate suitable is a
10 release date set. CCR, Title 15, §2282; See also Dannenberg, 34
11 Cal.4th 1061, 1071 (2005). ("[A] determination of individual
12 suitability must proceed the setting of a ... parole release
13 date.") The actual parole release date may well be (in some
14 cases) a number of years into the future, under the Board
15 regulations, the release date is established using a matrix that
16 takes into account the inmate's offense of imprisonment and the
17 circumstances in which it was committed. CCR, Title 15, §2282.

18 Supreme Court law clearly established a parole decision,
19 like a prison disciplinary decision, deprives a prisoner of due
20 process if it is not supported by "some evidence" or is
21 "otherwise arbitrary." Hill, supra, at 457; McQuillion v. Duncan
22 306 F.3d 895, 904 (9th Cir. 2002).

23 However, that evidence "must have some indicia of
24 reliability," Scott I, supra, 119 Cal.App.4th at p.899) and
25 "suitability determinations must have some rational basis in
26 fact. (In re Elkins, 144 Cal.App.4th at p.489).

27 As our Supreme Court has summarized it, "the judicial
28 branch is authorized to review the factual basis of a decision

1 of the board denying parole in order to ensure that the decision
2 comports with the requirements of due process of law, but ... in
3 conducting such review, the court may inquire only whether "some
4 evidence" in the record before the board supports the decision
5 to deny parole, based upon factors specified by statute and
6 regulation. If the decision's consideration of the specified
7 factors is not supported by "some evidence" in the record and
8 thus is devoid of a factual basis, the court should grant the
9 prisoner's petition for writ of habeas corpus and should order
10 the board to vacate its decision denying parole and thereafter
11 to proceed in accordance with due process of law. (Rosenkrantz,
12 supra, 29 Cal.4th at p.658, underline added). Finally, as has
13 been recently stated, because the overarching consideration is
14 public safety, the test in reviewing the board's decision
15 denying parole "is not whether some evidence supports the
16 reasons [the board] cites for denying parole, but whether some
17 evidence indicates a parolee's release unreasonably endangers
18 public safety.[Citations]. Some evidence of the existence of a
19 particular factor does not necessarily equate to some evidence
20 the parolee's release unreasonably endangers public safety." (In
21 re Lee, 143 Cal.App.4th at p.1408)(In re Barker, May 29, 2007),
22 DJDAR 7548)(In re Lawrence, (May 22, 2007) Cal.Rptr.3d
23 WL1475283)(In re Rosenkrantz, (2002) 29 Cal.4th 616, 665)(In re
24 Dannenberg, (2005) 34 Cal.4th 1061, 1100).

25 Merely to pick pieces from evidence to create one's version
26 sufficient to justify an action is not "some evidence"
27 reasonably related to the circumstances sufficient to deny
28 parole. Superintendent v. Hill, requires more. The Hill

1 requirement mandates that the evidence relied upon possess not
2 only an "indicia of reliability" but that is is "reasonably
3 related to the circumstances so as to constitute some evidence
4 that the crime was 'particularly egregious'". (i.e. "reasonably"
5 sufficient to support the decision made). See Hill, 472 U.S.
6 445, 455-56, (1985). Accordingly, to recite in rote,
7 circumstances of the crime sufficient under different
8 circumstances (for instance as one would apply to first degree
9 murder) and proclaim that sufficient under these circumstances,
10 does not constitute "some evidence" justifying denial of parole
11 or establish a current danger to the public. The decision of the
12 board is unreasonable in light of the volumes of evidence
13 showing suitability. Furthermore, since the evidence clearly
14 does not support the board's conclusion, the "conclusion" does
15 not possess any "indicia of reliability" and is patently
16 arbitrary and capricious, denying petitioner his liberty
17 interest in parole. It is clear that the board's finding amounts
18 to an "unreasonable" determination of the facts in light of the
19 evidence available to the board at the hearing. Only by
20 examination may the court determine whether the board's decision
21 was in fact "unreasonable" or "objectively unreasonable."
22 Delgado v. Lewis, 233 F.3d 976, 982 (9th Cir. 2000); Pham v.
23 Terhune 400 F.3d 740, 742 (9th Cir. 2005); Hines v. Thompson,
24 336 F.3d 848, 853 (9th Cir. 2003); Pirtle v. Morgan, 313 F.3d
25 1160, 1167 (9th Cir. 2002).

26 GROUND TWO:

27 THE BOARD FINDING OF UNSUITABILITY AND REFUSAL
28 OF THE GRANTING OF PAROLE VIOLATED THE
PETITIONER'S RIGHT TO DUE PROCESS AND DEPRIVED

1 HIM OF HIS FEDERALLY PROTECTED LIBERTY INTEREST
2 WHEN THE BOARD DENIED PETITIONER A PAROLE GRANT
3 WITHOUT ANY RELIABLE EVIDENCE OR "SOME
4 EVIDENCE," IN VIOLATION OF THE 5TH AND 14TH
5 AMENDMENT OF THE UNITED STATES CONSTITUTION.

6 Section 3041 of the California Penal Code creates
7 substantial presumption that a parole release date shall be set
8 at the initial parole hearing, and in a manner that is uniform
9 to other similar offenses. Subdivision (a) and (b), of §3041
10 mandates that a parole release date "shall" be set "unless" the
11 board finds that the gravity of the commitment offense or
12 offenses, or the timing and gravity of past convicted offenses
13 are such that a consideration of the public safety warrant not
14 setting a release date at that hearing. "Furthermore, if there
15 be any reasonable doubt as to identity of offense we are bound
16 to resolve that doubt in favor of petitioner." (In re Bramble,
17 1947, 31 Cal.2d 43, 51, [6], 187 P.2d 411). Moreover, the rule
18 is established that when language which is reasonably
19 susceptible of two constructions is used in a penal law,
20 ordinarily that construction which is more favorable to the
21 offender will be adopted. The defendant is entitled to the
22 benefit of every reasonable doubt, whether it arises out of a
23 question of fact, or as to the true interpretation of words or
24 the construction of language used in a statute. (People v.
25 Stuart, (1956), 47 Cal.2d 167, 175, [7], 302 P.2d 5, 55 A.L.R.2d
26 705; People v. Smith, (1955) 44 Cal.2d 77, 79 [2], 279 P.2d 33;
27 In re Bramble, (1947) supra, 31 Cal.2d 43, 51 [6,7], 187 P.2d
28 441; In re McVickers, (1946) 29 Cal.2d 264, 278, 176 P.2d 40;
People v. Valentine, (1946) 28 Cal.2d 121, 143 [20], 159 P.2d 1;
People v. Ralph, (1944), 24 Cal.2d 575, 581 [2], 150 P.2d 401).

1 There is no other criteria in the statute for denying parole to
2 a prisoner. It appears from the language that "consideration of
3 the public safety" is nonetheless limited to the gravity of the
4 offense and/or the timing and gravity of any past "convicted"
5 offense or offenses. The statute does not encompass or authorize
6 some of the criteria set forth by the California Code of
7 Regulations, Title 15, §2402. It does appear that the statute
8 has been enlarged to include additional criteria not expressly
9 authorized by the statute.

10 Notwithstanding, the argument set forth in the petition is
11 not merely an argument about a state law violation. The
12 presumption vested by the statute is substantial, while the
13 statutory criteria the board must meet in order to deny parole
14 is limited to criminal conduct at the time of the offense. For
15 the board to interpret the statute in such a manner as to deny
16 parole solely on the commitment offense after the board had
17 denied petitioner on the exact same point three times, deprives
18 petitioner of a substantial liberty interest protected by
19 federal due process. (See Biggs at 334 F.3d 917). The effect of
20 such an interpretation, established by practice, is to subject
21 all prisoners to pro forma decisions, where the board goes
22 through the motion of due process review, citing post hoc
23 rationalizations to justify the parole denial, that is now
24 always the result. This is little different that a decision to
25 deny parole made without any evidence to support it. Thus, by
26 misinterpretation, whether inadvertently or intentionally, the
27 result is not merely a violation because it is an action the
28 board is simply not authorized to take by the enabling statute

1 that impinges on federally protected liberty interests.
2 Petitioner relies on this claim which is now brought before the
3 state court.

4 A. THE BOARD DID NOT MEET THE BURDEN OF PROOF THAT
5 PETITIONER POSES AN "UNREASONABLE RISK" OF
6 THREAT TO PUBLIC SAFETY IF RELEASED ON PAROLE.
7 THE DECISION WAS WITHOUT EVIDENCE AND WAS
8 ARBITRARY AND CAPRICIOUS, VIOLATING FUNDAMENTAL
9 DUE PROCESS.

10 The regulatory law requires the board to set a release date
11 unless it finds that the prisoner poses an "unreasonable risk"
12 to public safety if released at that time. (15 CCR, §2402). This
13 is consistent with the enabling state which requires the setting
14 of a release date.

15 If the preponderate record before the board demonstrates
16 that petitioner does not post the "unreasonable risk" (which the
17 record shows that he does not, from petitioner's last 3 parole
18 hearings), a release date must be set.

19 If the board denies petitioner parole without making this
20 requisite finding based on relevant and credible facts in the
21 record, then this is not merely a state law violation, but a
22 deprivation of the substantial liberty interest he has in
23 obtaining a release date. Failure of the board to act in accord
24 with the regulations, in such situations, constitutes a
25 substantive due process violation because it constitutes an
26 abuse of discretion that unfairly and inaccurately deprives the
27 prisoner of his right to that federally protected liberty
28 interest. The board needs more than "some evidence" to arrive at
their decision, even though once the decision is made, the
reviewing court needs only to find "some evidence" to support

1 the decision or findings that were made. As petitioner will
2 point out, the "some evidence" standard is not a "burden of
3 proof" - although the board and the governor seems to think it
4 is. Petitioner will demonstrate by clear and convincing facts
5 that the board's burden of proof is the "preponderance of
6 evidence" standard, but they totally ignore this in arriving at
7 their post hoc rationalization to deny parole in nearly every
8 case. There must be a weighing and balancing process according
9 to a burden of proof.

10 Thus, petitioner alleges that the board's decision in his
11 case exceeded the bounds of "review" and was made without the
12 procedural safeguards required by the Constitution, and without
13 applying the proper proof necessary to overcome the presumptive
14 right to release delineated in Penal Code §3041.

15 Statutory law in California applies the "rock bottom"
16 burden of proof in judicatory proceedings at the "preponderance
17 of evidence" level. (Evidence Code §115). The board lists under
18 "good cause," the preponderance evidence (15 CCR, Division 2,
19 §2001(b)(49), and also lists "relevant" and "material" evidence
20 as the standard for being valid "evidence." (15 CCR, Div. 2,
21 §2000(b)(62)(material evidence), and (90)(relevant evidence).
22 The "good cause" provision is a requirement for decision making
23 that applise to all substantive decisions. These regulatory and
24 statutory provisions initiate the weighing and balancing process
25 of evidence at parole hearings. A responsibility the board must
26 undertake. The board cannot apply the "some evidence" standard
27 because it is not a burden of proof. (In re Ramirez, (2001) 94
28 Cal.App.4th 549 at 564-565; Edwards v. Balisok, (1997) 520 U.S.

641, at 648). The "some evidence" applies only to questions of evidentiary sufficiency as an "additional requirement of due process, not substituted for other due process requirements." (Ibid.) The "some evidence" standard is applied only by the reviewing court to determine if the board's (governor's) decision is supported by "some evidence," if the court finds the board complied with all other requisite due process requirements. If the board failed to apply a critical element in the weighing and balancing of evidence, such as a burden of proof, then the court cannot deny the petition because there isn't "some evidence" in the record to support the decision. (Scott I, supra, 119 Cal.App.4th at p.899, In re Elkins, supra, 144 Cal.App.4th at 489). As the Appellate Court in In re Caswell 92 Cal.App.4th 1017, 1029, pointed out, there is always some evidence in the record of unsuitability of parole, which if invoked, would subject every consideration of parole to an arbitrary standard or political whim, but for a burden of proof, and the burden of producing evidence, is clearly in California law, e.g. People v. Dubon, 90 Cal.App.4th 949, 952, (2001), and applies to all state agencies.

Here, where the statute presumes that a parole date "shall normally" be set, the board must, in their weighing and balancing of all relevant, material and reliable evidence, present by a preponderance of that evidence, a "rational connection" between the basic facts the board is asserting as sufficient to deny parole, and the ultimate fact statutorily presumed, i.e., that the prisoner is more than likely not "suitable" for setting a parole release date.

1 Petitioner submits that the board and the governor have
2 broad discretion in parole matter, but the requirement of
3 procedural due process embodied in the California Constitution
4 places some limitations upon these discretionary powers.

5 As heretofore shown, the board's burden of proof is the
6 preponderance of relevant and material evidence standard. This
7 is the "rock bottom" standard allowed by California law.
8 (Evidence Code §115; see e.g. Charlton v. Federal Trade Comm.,
9 543 F.2d, 903-907, 908, (D.C. Cir. 1976)(speaking to this
10 standard as being "rock bottom" burden of proof). "Good Cause"
11 is defined in the BPT's regulations as "a finding by the board
12 based upon a preponderance of the (material and relevant)
13 evidence that there is a factual basis and good reason for the
14 decision made." (Ibid. 2000). Here, in petitioner's case, the
15 board, based on the "material and relevant" evidence found
16 petitioner unsuitable for parole on the basis of the commitment
17 offense which petitioner has been denied three times base
18 primarily on the same issues, i.e., unchanging factors. This is
19 a clear due process violation and especially where the relevant
20 and reliable evidence concerning public safety that was
21 presented at petitioner's subsequent parole consideration
22 hearings that show that petitioner does not pose an
23 "unreasonable risk to the public if released at this time.

24 The mandatory language in §3041 of the Penal Code
25 established a rebuttable presumption affecting the board's
26 burden of producing evidence and the burden of proof
27 implementing public policy regarding the parole of "term to
28 life" prisoners.

1 Petitioner asserts that the ultimate facts sought is a
 2 determination whether the prisoner is currently in "unreasonable
 3 risk" of danger to the public safety if released on parole.
 4 (Subd. (b), Penal code §3041; 15 CCR. §2402(a)).

5 The presumption created by mandatory language in both
 6 subdivision (a) and (b) of P.C. §3041 is that the petitioner
 7 "shall normally" have a parole release date set "unless" the
 8 presumption is overcome by the board which carries the burden of
 9 proof as to the existence of the presumed fact. McQuillion v.
 10 Duncan, 306 F.3d, 901-902, (9th Cir. 2002); Biggs v. Terhune,
 11 334 F.3d 910, 916-917 (9th Cir. 2003) (regarding the presumption
 12 in Penal Code §3041). If the board cannot produce the evidence
 13 according to the burden of proof required, then the presumption
 14 stands, and the court is obliged to uphold the presumption, and
 15 under In re Smith, 109 Cal.App.4th 489 (2003), must order
 16 petitioner released from custody.

17 B. THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT
 18 PROHIBITS STATE ACTION THAT DEPRIVES A PERSON
 19 OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE
 20 PROCESS OF LAW.

21 The due process clause of the 14th Amendment prohibits
 22 state action that deprives a person of life, liberty, or
 23 property, without due process of law. A person alleging a due
 24 process violation must first demonstrate that he or she was
 25 deprived of liberty or property interest protected by the due
 26 process clause, and then show that the procedures that led to
 27 the deprivation were constitutionally insufficient. Kentucky
 28 Dept. of Corrections v. Thompson, 490 U.S. 454, 459-460 (1989);
McQuillion v. Duncan, 306 F.3d, 895, 900 (9th Cir. 2002).

1 In the parole context, a prisoner alleging a due process
2 claim must demonstrate the existence of a protected liberty
3 interest in parole, and the denial of one or more of the
4 procedural protections that must be afforded when a prisoner has
5 a liberty interest in parole. The Supreme Court held in 1979,
6 and reiterated in 1987, that "a state's statutory scheme, if it
7 uses mandatory language, creates a presumption that parole
8 release will be granted when or unless certain designated
9 findings are made, and thereby gives rise to a constitutional
10 liberty interest." McQuillion, supra, 306 F.3d, 16, 901 (citing
11 Greenholtz v. Inmates of Nebraska Penal, 442 U.S. 1, 7 (1979)
12 and Board of Pardon v. Allen, 482 U.S. 369, 373 (1987)).

13 The Ninth Circuit has held that California's parole scheme
14 creates a cognizable liberty interest in release on parole
15 because Penal Code §3041 uses mandatory language and is similar
16 to the Nebraska and Montana statutes addressed in Greenholtz and
17 Allen, respectively. McQuillion, 306 F.3d 15, 901-902. As the
18 Ninth Circuit has explained, "§3041 of the California Penal Code
19 creates in every inmate a cognizable interest in parole which is
20 protected by the procedural safeguards of the due process
21 clause," and that interest arises "upon the incarceration of the
22 inmate." Biggs v. Terhune, 334 F.3d 910, 914-915 (9th Cir.
23 2003).

24 GROUND THREE:

25 THE BOARD VIOLATES DUE PROCESS BY REPEATEDLY
26 RELYING ON THE UNCHANGING FACTS OF THE CRIME IN
27 THE FACE OF CLEAR EVIDENCE OF REHABILITATION
28 AND BY MAKING RECOMMENDATIONS OF WHAT TO DO TO
BE FOUND SUITABLE AT EACH HEARING. A FINDING OF
EGREGIOUSNESS IS BARRED BY THE INMATE'S
COMPLIANCE WITH THOSE AGREED TERMS.

1 When the board repeatedly relies on the unchanging facts of
2 the crime to deny parole, in the face of clear evidence that the
3 inmate has been rehabilitated, due process is violated. Biggs v.
4 Terhune, supra, at 915-916, Ramirez, supra, at 571). However,
5 here, the board goes a step further. At the conclusion of each
6 hearing attended by petitioner, the board gave him a series of
7 what to do to be found suitable for parole. If the crime was
8 going to continue to be an impediment to parole, then what
9 difference would it make whether petitioner followed those
10 recommendations, since parole would be denied in any event as
11 the crime will never change? How could the board make those
12 recommendations in good faith if the crime was such that parole
13 was not going to occur no matter how well petitioner programs?
14 Even worse, if he complies with those recommendations and the
15 board gives him a parole date, if the governor is permitted to
16 effectively negate this whole process unilaterally taking that
17 parole date away, then the recommendations and compliances are
18 rendered useless acts.

19 The board has a duty to make all recommendations
20 "sufficiently clear" to inform petitioner what conduct will
21 result in a grant of parole. (U.S. v. Guagliardo, 278 F.3d
22 868-872, (9th Cir. 2002)[citing Graynet v. City of Rockford, 408
23 U.S. 104, 108-109, (1972)]. "A prisoner's due process rights are
24 violated if parole conditions are not made 'sufficiently clear'
25 so as to inform him of what conduct will result in his being
26 returned to prison. Likewise, the Board of Prison Terms has a
27 duty to make recommendations for parole eligibility
28 'sufficiently clear' so as to inform the inmate of conduct that

1 will warrant a finding of suitability." U.S. v. Guagliardo,
2 supra, 278 F.3d 868. Thus, the onus is on the board to clearly
3 and specifically stated what conduct will warrant a finding of
4 suitability. Therefore, it follows that there is only one way to
5 interpret the recommendations given to petitioner at the
6 Documentation hearing and at each of the Subsequent parole
7 hearings. They constitute the board's "sufficiently clear"
8 instructions as to what petitioner must do to be found suitable.
9 As stated, it is indisputable but that petitioner has complied
10 with every single one of the board's directives to him, and
11 thus, the board must finally find petitioner suitable for
12 release. If the board's directions to the inmate are not
13 acknowledged as sincere offers providing legitimate goals for
14 achieving a status of parole suitability, then they are mere
15 "hoops" designated to support elaborate ruse and a further
16 affront to the due process rights of all prisoners who rely upon
17 them.

18 As noted, petitioner sincerely relied upon the
19 recommendations of the prior board panels, and he partook to
20 fulfill each one. Petitioner's fulfillment may be recognized
21 through his educational and vocational accomplishments and
22 gains, his ongoing self-help work and his crime free behavior
23 throughout his nearly 30+ years of incarceration. Petitioner has
24 complied with those directives following each and every hearing,
25 and the board should finally recognize his compliance by
26 granting parole.

27 A. CONTINUED RELIANCE ON THE UNCHANGING FACTS OF THE
28 CRIME VIOLATES DUE PROCESS.

1 In Biggs v. Terhune, the 9th Circuit held that even if the
2 commitment offense(s) are sufficient to support a denial of
3 parole based upon considerations of due process. Biggs v.
4 Terhune, supra, 334 F.3d at 916. The Ramirez court also
5 acknowledged that there will always be "some evidence" to
6 support a finding that a prisoner committed the underlying
7 offense. Those facts alone, however, do not justify the denial
8 of parole. Thus, while concluding that there was factual support
9 for the findings as to the crime and priors, the Ramirez, court
10 still found the board's decision arbitrary since there had been
11 7 hearings at that point, 9 years had passed beyond the minimum
12 term and it was 17 years after entering prison, and all evidence
13 showed rehabilitation. (Id. at 571). Likewise, as the Biggs court
14 more recently said, despite the fact that there may remain
15 evidence to support a finding of egregiousness of the crime:

16 "A continued reliance in the future on an
17 unchanging factor, the circumstances of the
18 offense and conduct prior to imprisonment,
19 runs contrary to the rehabilitative goals
20 espoused by the prison system and could result
21 in a due process violation." (Biggs, supra, at
22 916-917).

23 In the published case of Irons v. Warden, 358 F.Supp.2d 936
24 (E.D. Cal. 2005), the federal court found that the board
25 violated the prisoner's due process by continuing to rely on the
26 immutable factors. (e.g. the commitment offense and history
27 prior to incarceration) to support the denial of parole. In
28 doing so, the federal judge there ruled that continuing to rely
on those factors that can never change, such as the commitment
offense, or history prior to imprisonment, where there is no
proof of continuing bad conduct to support a finding of current

1 threat to the public, offends due process.

2 In interpreting the rule set forth in Biggs, and the plain
3 language of Penal Code §3041, it is clear that even if the crime
4 may be considered egregious, under federal due process
5 principles, the denial of parole based on the immutable facts of
6 the crime is only authorized at the first parole consideration
7 hearing. The provisions of Penal Code §3041 only talk of the use
8 of the crime to defer setting of a date at the initial hearing.
9 (Penal Code §3041(a)). After that, to give the statute a
10 constitutional interpretation that is not unreasonably vague,
11 further denials would have to be based on some facts arising
12 subsequent to the crime that show a continued propensity for
13 violence, making the inmate a danger to the public. (Biggs v.
14 Terhune, supra, 334 F.3d at 914-915). To rule otherwise would
15 put petitioner in an impossible situation, where no matter what
16 he shows in terms of positive behavior, reformation,, self-help,
17 work skills, parole plans, or just rehabilitation in general, he
18 would never be able to overcome the unchanging facts of the
19 crime. The only logical application of Constitutionally Due
20 Process dictates what the court in Irons held, i.e., that any
21 subsequent denial requires the presence of some in-prison
22 behavior showing that the inmate currently presents an
23 unreasonable risk of danger if paroled.

24 Here, the facts of the crime have been used as the real
25 reason for denying parole on 3 separate occasions, yet, those
26 facts have never been tied to current behaviors showing
27 petitioner still presents an unreasonable risk of danger to the
28 public at this time. A rule requiring the presence of in-prison,

1 adverse behavior to justify further denial based on the crime,
2 simply recognizes what the 9th Circuit in Biggs alluded to when
3 it talked of the rehabilitative goals of the system, and, the
4 need to take into consideration that a person can change. At
5 this point, petitioner has been incarcerated for 30+ years,
6 eligible for parole for more than 7 of those years. His
7 programming clearly shows his full rehabilitation. In drawing
8 the line as to when further denials become arbitrary, it is
9 obvious that the line has clearly been crossed in this case, and
10 in fact, was crossed as soon as the crime was used in the second
11 parole hearing without the presence of facts showing a continued
12 risk of danger based on how petitioner was programming in
13 prison. To the contrary, the in-prison facts are exclusively
14 positive.

15 As the Ramirez court noted, the paroling authority must do
16 more than merely commend petitioner for the hard work done to
17 rehabilitate himself while in prison. They must actually
18 consider these factors "as...circumstance[s] tending to show his
19 suitability for parole." Ramirez, supra, 94 Cal.App.4th at
20 571-572 [emphasis original]. Of course, all the board did with
21 petitioner's extensive accomplishments was to brush them aside
22 with several terse lines, and issue superficial compliments. The
23 Biggs rule is clear that if an inmate continue[s] to demonstrate
24 exemplary behavior and evidence of rehabilitation, denying him a
25 parole date simply because of the nature of his offense and
26 prior conduct would raise serious questions involving his
27 liberty interest in parole. Biggs v. Terhune, supra, 334 F.3d at
28 916. Here, the evidence of rehabilitation is beyond dispute.

1 In comparing the present case with Biggs, it is undeniably
2 clear that the board lacks any justification whatsoever to
3 continue to deny petitioner a parole date. In Biggs, the inmate
4 was convicted of the premeditated and deliberate First Degree
5 Murder of a witness in a major theft case against the
6 defendants, and yet, the court was quick to caution the board
7 that it could not continue to solely rely on the commitment
8 offense to deny the inmate parole, even though it was only his
9 initial hearing at that point. Yet, petitioner has been denied
10 parole on 3 separate occasions, each time effectively relying
11 virtually exclusively upon the unchanging facts of his
12 commitment offense. The continued reliance upon the commitment
13 offense is simply arbitrary, particularly in the fact of the
14 board's acknowledgements of petitioner's model behavior in
15 prison and extensive accomplishments, all of which are conceded
16 by the statement of decision. Therefore, as the court states in
17 Biggs, denying him a parole date simply because of the nature of
18 the offense, not only raises serious questions involving his
19 liberty interest in parole, but blatantly violates due process.
20 (See Biggs v. Terhune, supra, 334 F.3d at 915-916; Irons,
21 supra).

22 B. CONTINUED RELIANCE UPON FACTS OF THE CRIME VIOLATES
23 DUE PROCESS.

24 First, continued reliance upon these unchanging factors
25 makes a sham of California's parole system and amounts to an
26 arbitrary denial of petitioner's "liberty interest in release on
27 parole," and his "presumption that a parole release date will be
28 granted." (See McQuillion v. Duncan, 306 F.3d 895, 902 (9th Cir.
2002), Biggs, 334 F.3d at 914-915, Rosenkrantz, 29 Cal.4th at

654, 661). Petitioner has been denied parole on 3 different occasions. continued reliance upon these unchanging factors amounts to converting petitioner's offense to a term of life without the possibility of parole. (See Irons, 358 F.Supp.2d at 947 ["continuous reliance on the unchanging circumstances transforms an offense into a de facto life imprisonment without the possibility of parole"]; Scott, 34 Cal.Rptr.3d at 919-920, 133 Cal.App.4th at 594-595; Shaputis, 37 Cal.Rptr.3d at 335).

Second, the circumstances of the crime and petitioner's conduct prior to imprisonment do not amount to some evidence supporting the conclusion that petitioner "currently" (underline added) poses an unreasonable risk of danger if released at this time."

In re Shaputis, (2006) 37 Cal.Rptr.3d 324, 334-335). In the parole context, the requirements of due process can only be met if "some evidence" supports the decision and the evidence underlying the decision is supported by "some indicia of reliability." Biggs, 334 F.3d at 914; Caswell v. Calderon, 353 F.3d 832, 839 (9th Cir. 2004); Scott, 119 Cal.4th at 899; Superintendent v. Hill, 472 U.S. 445, 455-457 (1985); McQuillion v. Duncan, 306 F.3d 895, 903 (9th Cir. 2002).

Petitioner presents a stronger case than Biggs for several reasons. First petitioner's commitment offense was less serious than the petitioner in Biggs. The Biggs petitioner was involved in a violent, manipulative and premeditated murder, the petitioner here has a much lesser serious offense than petitioner Biggs. Second, the Biggs petitioner had not yet served the full terms of his sentence, while petitioner here has exceeded his sentence by approximately three years. Finally,

1 petitioner here has demonstrated exemplary behavior and evidence
2 of rehabilitation; as required by Biggs court, for a significant
3 period of time. Therefore, the sole reliance on petitioner's
4 commitment offense in denying him parole impinges on
5 petitioner's constitutional liberty interest in parole. (Martin
6 v. Marshall, supra, 431 F.Supp.2d at p.1047). (In re Lawrence,
7 (May 22, 2007), Cal.Rptr.3d WL1475283 (Cal.App.2d Dist.)).

8 While it may have been reasonable to rely on petitioner's
9 offense and conduct prior to imprisonment as an indicator of
10 dangerousness for some period of time, continued reliance on
11 such unchanging circumstances after 30+ years of incarceration
12 and three parole suitability hearings, violates due process
13 because these factors now lack predictive value with regards to
14 petitioner's present and future dangerousness. After 30+ years
15 of rehabilitation in which petitioner's eligible parole date for
16 release was passed on February 4, 2000 , (Exhibit "B" , Initial
17 M.E.P.D.), the ability to predict petitioner's future
18 dangerousness based simply on the circumstances of the crime is
19 nil. (See Irons, 358 F.Supp.2d at 947 n.2 ["four prior times in
20 finding [Irons] unsuitable for parole" and "after 15 years" of
21 imprisonment, ability to assess dangerousness "is near zero."];
22 Scott, 133 Cal.App.4th at 595, 34 Cal.Rptr.3d at 919-920 ["the
23 predictive value of the commitment offense may be very
24 questionable after a long period of time."].

25 Petitioner's record is replete with evidence of
26 petitioner's rehabilitation, which was expressed by the board,
27 including Psychological Reports, Correctional Counselor's
28 Reports, extensive self-improvement through vocational,

1 educational, self-help therapy and disciplinary free
2 incarceration for the past 13 years. (See Exhibit "B").

3 While the board may initially have been entitled to rely
4 upon the commitment offense and petitioner's conduct prior to
5 imprisonment to find petitioner unsuitable for parole, under
6 these circumstances, petitioner submits that the continued
7 reliance and sole reliance of the convicted offense do not now
8 constitute "some evidence" with "some indicia of reliability" of
9 petitioner's current dangerousness. (See Hill, 472 U.S. at 445;
10 Biggs, 334 F.3d at 917; Irons, 358 F.Supp.2d at 947; Masoner,
11 2004 WL1090188 *1-2; Bair, 2005 WL2219220, *12 n.3; Scott, 133
12 Cal.App.4th at 594-595, 34 Cal.Rptr.3d at 919-920; Rosenkrantz,
13 2002 29 Cal.4th 616, 665; Dannenberg, (2005) 34 Cal.4th 1061,
14 1100; In re Lee, (2006) 143 Cal.App.4th 1400, 1408; In re
15 Lawrence, (2007) Cal.Rptr.3d WL1475283; In re Barker, (2007)
16 DJDAR 7548).

17 C. JUDICIAL OVERSIGHT IS CRITICAL TO SAFEGUARD THE
18 UNDERLYING PURPOSE OF CALIFORNIA'S PAROLE SYSTEM
19 AND THE LIBERTY INTERESTS OF INMATES. THE
20 ESSENCE OF THE PAROLE SYSTEM IS THE RE-ENTRY OF
21 PRISONERS WHO NO LONGER POSE A PUBLIC THREAT.

22 Parole, the release of the imprisoned before they have
23 served the maximum time set by their sentence, has long been
24 part of the California penal system. The Indeterminate
25 Sentencing Law, requiring the trial judge to set a minimum but
26 not a maximum sentence was enacted in 1971. In re Minnis, (1972)
27 7 Cal.3d 639, 643, n.2 ("the court in imposing the sentence
28 shall not fix the term or duration of the period of
imprisonment")(citation and internal quotations omitted). The
goal of indeterminate sentences and the California parole system

1 is not only to punish but also to provide for reformation and
2 rehabilitation:

3 "The belief no longer prevails that every
4 offense in a like legal category calls for an
5 identical punishment without regard to the
6 past life and habits of a particular offender
7 ... retribution is no longer the dominant
8 objective of the criminal law. Reformation and
9 rehabilitation of offenders have become
10 important goals of criminal jurisprudence."

11 People v. Morse, (1964) 60 Cal.2d 631, 643, n.8 (quoting
12 Williams v. State of New York, (1949) 337 U.S. 241, 247). In a
13 lengthy discussion of this topic, the California Supreme Court
14 states as follows:

15 [T]he purpose of the indeterminate sentence
16 law, like other modern laws in relation to the
17 administration of the criminal law, is to
18 mitigate the punishment which would otherwise
19 be imposed upon the offender. These laws place
20 emphasis upon the reformation of the offender.
21 They seek to make the punishment fit the
22 criminal rather than the the crime. The
23 endeavor to put before the prisoner great
24 incentive to well-doing, in order that his
25 will to do well would be strengthened and
26 confirmed by the habit of well-doing.

27 [...]

28 [T]he interests of society require that under
prison discipline every effort should be made
to produce a reformation of the prisoner ...
The Legislative policy [was to provide a
system whereby] a hope was to be held out to
prisoners that through good conduct in prison
and a disposition shown toward reformation,
they might be permitted a conditional liberty
upon restraint under which they might be
restored again to society...

[...]

Although good conduct while incarcerated and
potential for reform are not the only relevant
factors, the court has acknowledged their
significance. Furthermore, authority has
declared that these factors are among those of
"paramount importance."

In re Minnis, Cal.3d at 644-645. The Rosenkrantz court, citing

1 Minnis, reaffirmed the principles. "[E]ven before factors
2 relevant to parole decisions had been set forth expressly by
3 state statute and by regulations, we concluded that [a]ny
4 official or board with discretion, is under obligation to
5 consider all relevant factors [citations], and the [official or
6 board] cannot, consistently with its obligation, ignore post
7 conviction factors unless directed to do so by Legislature." In
8 re Rosenkrantz, (2002) 29 Cal.4th 515, 656 (quoting Minnis, 7
9 Cal.3d at 645).

10 D. PRISONERS HAVE A CONSTITUTIONAL LIBERTY INTEREST
11 IN PAROLE DECISIONS.

12 "[P]arole applicants in California have an expectation that
13 they will granted parole unless the board finds, in the exercise
14 of its discretion, that they are unsuitable for parole in light
15 of the circumstances specified by statute and by regulation."
16 Rosenkrantz, 29 Cal.4th at 659-61 (holding that the California
17 Constitution, Article V, §8(b) and the California Penal Code
18 §3041, "give rise to a protected liberty interest in that "a
19 prisoner granted parole by the board has an expectation that the
20 governor's decision to affirm, modify, or reverse, the board's
21 determination will be based upon the same factors the board is
22 required to consider," and that "liberty interest underlying a
23 governor's parole review decision is protected by due process of
law.").

24 Federal courts have also unequivocally held that
25 California's parole system gives rise to a liberty interest
26 constitutionally protected by due process. (See Board of Pardons
27 v. Allen, (1987) 482 U.S. 369, 376-78; Greenholtz v. Inmates of
28 Neb. Penal & Correctional Complex, (1979) 442 U.S. 1, 11-12,

(holding a state's statutory parole scheme that uses mandatory language may create a presumption that parole release will be granted upon certain circumstances or findings, thus giving rise to a constitutionally protected liberty interest); McQuillion v. Duncan, (9th Cir. 2002) 306 F.3d 896, 902-903, n.1, 903 (holding that because California's parole scheme uses mandatory language and is largely parallel to the schemes found in Allen and Greenholtz, that give rise to a protected liberty interest in release on parole, "California's parole scheme gives rise to a cognizable liberty interest in release on parole"). Biggs v. Terhune, (9th Cir. 2003) 334 F.3d 910, 915-916.

E. STANDARD OF REVIEW REQUIRES AN EVIDENTIARY HEARING.

On habeas corpus, a petitioner is entitled to an evidentiary hearing where the petitioner has established a "colorable" claim for relief and where the petitioner has never been accorded a state or federal hearing on his claim. Earp v. Oronski, (9th Cir. 2003) 372 U.S. 293 (1963) and Keeney v. Tamaya-Reyes, 504 U.S. 1, 5 (1992). In stating a "colorable" claim, a petitioner is merely required to allege specific facts which, if true, would entitle him to relief. (Ibid.). Granted, under AEDPA, a federal court is not required to order a hearing where petitioner failed to develop the facts in state court. In such cases, the federal court accords a presumption of correctness to the facts found by the state court and need not hold a evidentiary hearing, unless those facts are rebutted by clear and convincing evidence. On the other hand, no deference is due where state had made an unreasonable determination of the facts and where a state court makes evidentiary finding without

1 holding a hearing and giving petitioner an opportunity to
2 present evidence. Such findings clearly result in an
3 "unreasonable determination" of the facts. Taylor v. Maddox,
4 (9th Cir. 2004) 336 F.3d 992, 1001.

5 In summation, an evidentiary hearing is required under the
6 AEDPA and the Appellate court will remand for a hearing if the
7 District Court rules without granting one, "where petitioner
8 establishes a colorable claim for relief and has never been
9 accorded a state or federal hearing on his claim." Earp, supra,
10 at 1167.

11 Here, petitioner requests an evidentiary hearing at every
12 level of the state's habeas proceedings and each of the court's
13 to which he appealed who rule without granting him an evidentiary
14 hearing. As a result, (1) petitioner is entitled to an
15 evidentiary hearing in this court before the court can make any
16 credibility determination of the facts alleged in the petition
17 and supporting exhibits; (2) any contrived facts found by the
18 state court while denying a request for an evidentiary hearing
19 necessarily resulting from an "unreasonable determination" of
20 the facts and hence are not entitled to any presumption of
21 correctness. (Earp, supra, at 1167; Taylor, supra, at
22 1101)["when state court's legal error infects the fact finding
23 process, thus resulting in factual determinations will be
24 unreasonable and no presumption of correctness can attach to
25 it"].

CONCLUSION

1
2 All criminal convictions represent the basest form of human
3 behavior. Our laws however, provide mechanisms by which even
4 some murderers are entitled to be paroled. The judiciary has an
5 obligation to faithfully execute those laws. The record
6 establishes that petitioner does not pose an unreasonable risk
7 to public safety. Any contrary conclusion lacks any evidentiary
8 support. As the record is void of any evidence to substantiate a
9 claim of "present danger" and allows only for a contrary
10 conclusion, it (justice) can only be served by an order from
11 this court directing an evidentiary hearing; and because there
12 is nothing which, either singly or in conjunction with other
13 evidence that could support any decision other than parole
14 suitable, the board's decision should be vacated; the petition
15 issued; the petitioner remanded back to the board with
16 directions to find petitioner suitable; set a parole release
17 date within 30 days; and/or petitioner ordered released. Only in
18 this way can the liberty interest petitioner continues to be
19 denied be restored.

20 ///

21 ///

PRAYER FOR RELIEF

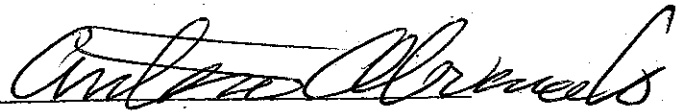
Petitioner is without remedy save for Habeas Corpus.

Accordingly, petitioner requests that the court:

1. Issue a Writ of Habeas Corpus granting petitioner's Due Process violation claims;
2. Issue an Order to Show Cause;
3. Declare the rights of petitioner;
4. Appoint counsel to represent petitioner;
5. Issue an Order directing an Evidentiary Hearing;
6. Issue an Order releasing petitioner based on supporting evidence;
7. Grant any and all relief found necessary or appropriate.

Dated this 28 day of April, 2008.

Respectfully submitted,



Antonio Armando Alvarado
Petitioner in Pro Per

///

///

EXHIBIT "A"

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

**INMATE
COPY**

In the matter of the Life)
Term Parole Consideration) CDC Number C-09142
Hearing of:)
ANTONIO ALVARADO)
_____)

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

MAY 31, 2007

9:12 A.M.

PANEL PRESENT:

Sandra Bryson, Presiding Commissioner
Jan Enloe, Deputy Commissioner

OTHERS PRESENT:

Antonio Alvarado, Inmate
Anthony Hall, Attorney for Inmate
Ronald Rico, Deputy District Attorney (Video)
Correctional Officers (Unidentified)

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____ No See Review of Hearing
_____ Yes Transcript Memorandum

Elizabeth Scott
Northern California Court Reporters

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P R O C E E D I N G S

DEPUTY COMMISSIONER ENLOE: We're on record.

PRESIDING COMMISSIONER BRYSON: And this is a second Subsequent Parole Consideration Hearing for Antonio Alvarez -- excuse me -- Alvarado. Pardon me, sir. Good morning, sir. How are you?

INMATE ALVARADO: Good morning to you.

PRESIDING COMMISSIONER BRYSON: All right, CDC number C-09142. Today's date is May 31st, 2007. The time is 9:12. We're located at the California Training Facility, Soledad. This inmate was received October 4th of 1979 from Santa Clara County. The life term began October 4th, 1979, with a minimum eligible parole date of February 14th, 2000 -- charging in Case No. SCL67828, count three, the controlling offense Penal Code 187, murder first, with Penal Code 12022.5, use of a firearm, a gun, with count one Penal Code 192.1, voluntary manslaughter, with Penal Code 12022B, use of a deadly weapon, to wit, a butcher knife, for which the inmate received a term of 25 years to life, plus two years. This hearing is being recorded. For the purpose of voice identification, each of us will say our first and last name, spelling the last name. When it is your turn, sir, after you spell your last name, please state your CDC number. I will start and then go

1 to my left. Sandra Bryson, B-R-Y-S-O-N, Commissioner,
2 Board of Parole Hearings.

3 **DEPUTY COMMISSIONER ENLOE:** Jan Enloe,
4 E-N-L-O-E, Deputy Commissioner.

5 **DEPUTY DISTRICT ATTORNEY RICO:** Ronald Rico,
6 R-I-C-O, Deputy District Attorney, Santa Clara County,
7 by way of video conference.

8 **ATTORNEY HALL:** Anthony Hall, H-A-L-L, attorney
9 for Mr. Alvarado.

10 **INMATE ALVARADO:** Antonio Alvarado,
11 A-L-V-A-R-A-D-O, CDC number C-09142.

12 **PRESIDING COMMISSIONER BRYSON:** And I note for
13 the record we have two correctional peace officers in
14 the room who are here for security purposes. And sir,
15 I need to swear you in. Would you raise your right
16 hand, please? Do you solemnly swear or affirm that the
17 testimony you give at this hearing will be the truth,
18 the whole truth, and nothing but the truth?

19 **INMATE ALVARADO:** I do.

20 **PRESIDING COMMISSIONER BRYSON:** Thank you.
21 Commissioner Enloe, is there any confidential material
22 in the file, and if so, will it be used today?

23 **DEPUTY COMMISSIONER ENLOE:** There is a
24 confidential -- there's a lot of confidential
25 information in the file that may or may not be used.

1 If it is used, we'll be sure to advise counsel.

2 PRESIDING COMMISSIONER BRYSON: All right, thank
3 you. I have passed the hearing checklist marked
4 Exhibit 1 to your attorney to ensure we're all
5 proceeding with the same set of documents. And
6 counsel, do you have all the documents?

7 ATTORNEY HALL: Yes, we do.

8 PRESIDING COMMISSIONER BRYSON: All right, thank
9 you. And I'd like to check with the District Attorney,
10 if you have the BPT 1008, which has an initial on it,
11 EM, and dated March 13th of 2007. Do you have those
12 documents?

13 DEPUTY DISTRICT ATTORNEY RICO: I expect that I
14 do. The Board Report section is not checked there, but
15 you were kind enough to have me faxed a copy of an
16 update, an addendum. So I should have all of the
17 documents.

18 PRESIDING COMMISSIONER BRYSON: Thank you.
19 Counsel, are there any additional documents to be
20 submitted?

21 ATTORNEY HALL: Not at this time, Commissioner.

22 PRESIDING COMMISSIONER BRYSON: All right. Sir,
23 if you would please read the document on the table, ADA
24 document, ahead of you there. Please read it out loud.

25 INMATE ALVARADO:

1 "The Americans with Disabilities Act, is
2 a law to help with disabilities.
3 Disabilities are problems that make it
4 harder for some people to see, hear,
5 breathe, talk, walk, learn, think, work,
6 or take care of themselves than it is
7 for others. Nobody can be kept out of
8 public places or activities because of a
9 disability. If you have a disability,
10 you have the right to ask for help to
11 get ready for your BPT Hearing, get to
12 the hearing, talk, read forms and
13 papers, and understand the hearing
14 process. BPT will look at what you
15 asked for to make sure that you have a
16 disability that is covered by the ADA
17 and that you have asked for the right
18 kind of help. If you do not get help,
19 or if you don't think you got the kind
20 of help you need, ask for a BPT 1074
21 grievance form. You can also get help
22 to fill it out."

23 **PRESIDING COMMISSIONER BRYSON:** Thank you, sir.

24 Do you understand what you read?

25 **INMATE ALVARADO:** Yes, ma'am.

1 PRESIDING COMMISSIONER BRYSON: All right. I
2 notice you wear glasses. Do they accommodate you for
3 reading?

4 INMATE ALVARADO: Yes, they do. I'm 60 years
5 old.

6 PRESIDING COMMISSIONER BRYSON: Well, good for
7 you. All right, you don't appear to have any hearing
8 difficulties. Is that correct?

9 INMATE ALVARADO: No, I don't.

10 PRESIDING COMMISSIONER BRYSON: Okay, good. And
11 you also didn't appear to have any motility issues
12 getting to the hearing room. Is that right?

13 INMATE ALVARADO: That's correct.

14 PRESIDING COMMISSIONER BRYSON: All right. And
15 I notice that on January 31st, 2007, you signed the BPT
16 Form 1073, the Reasonable Accommodations Notice and
17 Request in Accordance with the Provisions of the
18 Americans With Disabilities Act. Disability is defined
19 under the ADA. And that shows that you don't have any
20 disabilities per se, that you in fact have a reading
21 level of 8.1, and it has noted here that you have your
22 GED. Is that correct?

23 INMATE ALVARADO: Yes, it is.

24 PRESIDING COMMISSIONER BRYSON: Congratulations.
25 That's good.

1 INMATE ALVARADO: Thank you.

2 PRESIDING COMMISSIONER BRYSON: And that you
3 don't need otherwise any help for your parole hearing.
4 Were you ever in CCCMS or EOP?

5 INMATE ALVARADO: No, ma'am.

6 PRESIDING COMMISSIONER BRYSON: And have you
7 ever taken psychotropic medications, either in prison or
8 on the streets -- medications for mental health?

9 INMATE ALVARADO: In '84 or '85, at San Quentin,
10 I was given Sinoquin (phonetic) for sleep. I'm not sure
11 if that's considered a psych med or what.

12 PRESIDING COMMISSIONER BRYSON: It probably is,
13 but that's quite a long time ago.

14 INMATE ALVARADO: Oh, okay. Since then I have
15 not taken medication.

16 PRESIDING COMMISSIONER BRYSON: Outstanding.
17 All right.

18 INMATE ALVARADO: I had a psychiatrist tell me
19 once that in the long run it's not going to be very
20 healthy for me. He said I didn't need it, so I stopped.

21 PRESIDING COMMISSIONER BRYSON: Outstanding.
22 All right, that's good. Do you have any other
23 disabilities, you think, that could prevent you or
24 impede you from participating in today's hearing?

25 INMATE ALVARADO: No, I don't, Commissioner.

1 **PRESIDING COMMISSIONER BRYSON:** All right. And
2 counsel, do you concur?

3 **ATTORNEY HALL:** Yes, ma'am.

4 **PRESIDING COMMISSIONER BRYSON:** Thank you. This
5 hearing is being conducted pursuant to Penal Code
6 Sections 3041 and 3042, and the Rules and Regulations
7 of the Board of Parole Hearings governing parole
8 consideration hearings for life inmates. The purpose
9 of the hearing today is to consider your suitability
10 for parole. In doing so, the panel will consider the
11 number and nature of the crimes for which you were
12 committed, your prior criminal and your social history,
13 and your behavior and programming since your
14 commitment. The panel has had the opportunity to
15 review your Central File. You will be given the
16 opportunity to correct or clarify the record. The
17 panel will consider your progress since your
18 commitment, your counselor's report and psychological
19 report, and any other relevant information. Any change
20 in parole plans should be brought to the panel's
21 attention. The panel will reach a decision today and
22 inform you whether or not it finds you suitable for
23 parole and the reasons for the decision. If you're
24 found suitable for parole, the length of your
25 confinement will be explained to you. Nothing that

1 happens here today will change the findings of the
2 court. The panel is not here to retry your case. The
3 panel is here for the sole purpose of determining your
4 suitability for parole. Do you understand?

5 **INMATE ALVARADO:** Yes.

6 **PRESIDING COMMISSIONER BRYSON:** All right. The
7 hearing will be conducted in three phases. I will
8 discuss with you the crime for which you were committed,
9 and your prior criminal and social history.
10 Commissioner Enloe will then discuss with you your
11 progress since your commitment, your counselor's report,
12 and your psychological evaluation. I will then discuss
13 with you your parole plans and any letters of support or
14 opposition that may be in the file. Once that is
15 concluded, the panel, and then the District Attorney,
16 and then your attorney, will be given the opportunity to
17 ask you questions. Questions from the District Attorney
18 shall be asked through the chair, and you'll direct your
19 answers to the panel. Next the District Attorney, and
20 then your attorney, and then you, will be given the
21 opportunity to make a final statement regarding your
22 parole suitability. Your statement should address why
23 you feel you are suitable for parole. The panel will
24 then recess, clear the room and deliberate. Once the
25 deliberations are completed, the panel will resume the

1 hearing and announce the decision. The California Code
2 of Regulations states that regardless of time served, a
3 life inmate shall be found unsuitable for and denied
4 parole if in the judgment of the panel the inmate would
5 pose an unreasonable risk of danger to society if
6 released from prison. You have certain rights, sir.
7 Those rights include the right to a timely notice of
8 this hearing, which by law is the week of the hearing
9 per Title 15. Were you given notice of this hearing?

10 INMATE ALVARADO: Yes, I was.

11 PRESIDING COMMISSIONER BRYSON: All right. The
12 right to review your Central File. Sir, I don't have any
13 indication that you did an Olsen review. Have you done
14 a recent Olsen review?

15 INMATE ALVARADO: Yes, I did.

16 PRESIDING COMMISSIONER BRYSON: Approximately
17 what month was that? Do you remember?

18 DEPUTY COMMISSIONER ENLOE: Excuse me,
19 Commissioner, there is a chrono in the file dated
20 3/14/07. Does that sound about right?

21 INMATE ALVARADO: Yes, it does.

22 DEPUTY COMMISSIONER ENLOE: The inmate, he did
23 review is file --

24 PRESIDING COMMISSIONER BRYSON: All right.

25 DEPUTY COMMISSIONER ENLOE: -- with no

1 accommodation.

2 **PRESIDING COMMISSIONER BRYSON:** Thank you. Sir,
3 you also have the right to be heard by an impartial
4 panel. Do you have any evidence that the panel before
5 you today cannot be impartial?

6 **INMATE ALVARADO:** No, I don't.

7 **PRESIDING COMMISSIONER BRYSON:** All right. You
8 have the right to present relevant documents, and we've
9 already asked for those, but if you have any further
10 documents, they can be presented at any time during this
11 hearing as appropriate. You will receive a copy of the
12 panel's written tentative decision today. That decision
13 will become effective within 120 days. It is also
14 subject to review by the Governor. A copy of the
15 tentative decision and a copy of the transcript will be
16 sent to you. The Board has eliminated its appeal
17 process. If you disagree with anything in today's
18 hearing, you have the right to go directly to the court
19 with your complaint. You are not required to admit your
20 offense or discuss your offense if you do not wish to do
21 so. However, this panel does accept as true the
22 findings of the court, and you're invited to discuss the
23 facts and circumstances of the offense if you so desire.
24 The Board will review and consider any prior statements
25 you have made regarding the offense in determining your

1 suitability for parole. So it quite simple, basically
2 -- just tell the truth. Counsel, are there any
3 preliminary objections?

4 **ATTORNEY HALL:** No.

5 **PRESIDING COMMISSIONER BRYSON:** Will the inmate
6 be speaking with the panel today?

7 **ATTORNEY HALL:** He will speak with the panel on
8 all matters except the life crime. In the past he has
9 discussed it and he has admitted to committing the crime
10 and has taken responsibility. He has nothing additional
11 to add.

12 **PRESIDING COMMISSIONER BRYSON:** All right, I'm
13 going to address that, taking responsibility, after I in
14 fact incorporate by reference both chronos. We're
15 actually looking at multiple crimes here, and
16 referencing that the manslaughter case actually came as
17 the first crime that occurred, which occurred on June
18 23rd of 1977. And then the count three, which is the
19 controlling offense, actually occurred on January 6th of
20 1979. And I'll incorporate by reference from the
21 probation officer's report both of those crimes. And
22 counsel, I would like to ask you, because we have
23 multiple versions of the prisoner's version of these
24 crimes, and I'm going to refer to that in the Board
25 Report that is dated -- stand by -- March 2004 is the

1 comprehensive Board Report, the last one that we have,
2 and that was prepared by A. King, common spelling,
3 Correctional Counselor I. And those -- that version, or
4 those versions, actually, appear as statements that the
5 inmate has made in writing, and they are conflicted. So
6 my question is, I realize that your client, and
7 rightfully so, does not wish to discuss the crime, but
8 you said that everything he wanted to say before he has
9 said, but he did give conflicting versions before, so
10 we're at a loss as to what version is the correct
11 version.

12 **ATTORNEY HALL:** I had a chance to review the
13 transcript of the March 2000 hearing where questions
14 were asked, and they were truthfully answered. And as
15 far as my understanding is, as stated in the March 28,
16 2000 hearing, Mr. Alvarado answered all the questions of
17 the panel and essentially discussed both crimes.

18 **PRESIDING COMMISSIONER BRYSON:** Excuse me. So
19 you're representing that as his version of it?

20 **ATTORNEY HALL:** Yes. And let me just confirm
21 again with Mr. Alvarado. Is that correct, Mr. Alvarado?

22 **INMATE ALVARADO:** Yes.

23 **ATTORNEY HALL:** In 2000, you accurately answered
24 or truthfully answered the questions posed by the panel?

25 **INMATE ALVARADO:** To the best of my ability,

1 yes.

2 **ATTORNEY HALL:** And that is your version as
3 well, your truthful statements as to the crime?

4 **INMATE ALVARADO:** Yes, it is.

5 **PRESIDING COMMISSIONER BRYSON:** Thank you. And
6 the panel will review that transcript as his version. I
7 appreciate that. All right, and then moving to the
8 pre-conviction factors for this inmate, sir, to be quite
9 candid, it appears that you were what used to commonly
10 be referred to as a career criminal at one point in your
11 life. Is that correct? I mean, you had -- you have an
12 enormous record. It's so large that I'm not going to
13 read it into the file. I'm going to merely incorporate
14 that by reference from the California Identification
15 Investigation Bureau account of your record. But you
16 started out as a juvenile in 1956, at age 9, with a
17 burglary. You immediately got a sentence to CYA. And
18 then you had parole violations -- or, excuse me --
19 revocations, and which actually you had violations which
20 resulted in revocations. And then you had in '61, at
21 age 14, another burglary for which you were sentenced to
22 CYA again. And again, you violated parole. That parole
23 was revoked. In 1964, you had another commitment to CYA
24 at age 17 for destruction of property and malicious
25 mischief. What was going on in your life, sir, that you

1 were -- then it continued into adulthood. It goes from
2 drunk to driving suspended, sniffing glue, inhaling
3 poisonous fumes, resisting arrest, hit and run, assault
4 and battery. Your record is massive, sir, and goes all
5 the way up. Just about every single year you had jail
6 time or arrests and suspensions and probation. What was
7 going on with you? Can you explain that?

8 **INMATE ALVARADO:** I -- probably too much
9 involved in my environment, people I hung around with,
10 being influenced, not very smart with my decisions, of
11 course.

12 **PRESIDING COMMISSIONER BRYSON:** You were in a
13 gang. Is that true?

14 **INMATE ALVARADO:** What gang are we speaking of?

15 **PRESIDING COMMISSIONER BRYSON:** You tell me.
16 Were you in a gang?

17 **INMATE ALVARADO:** Oh, yes. I've been involved
18 in --

19 **PRESIDING COMMISSIONER BRYSON:** How early did
20 you start in with the gangs?

21 **INMATE ALVARADO:** Probably 14 years old, 15.

22 **PRESIDING COMMISSIONER BRYSON:** Okay. Well, you
23 started your first burglary at age 9. What were you
24 doing a burglary at age 9? What was that about?

25 **INMATE ALVARADO:** You know, I can't even recall

1 the burglary at that time, what it was that I
2 burglarized.

3 **PRESIDING COMMISSIONER BRYSON:** I wondered if
4 you were a want-to-be gangster at the age of 9.

5 **INMATE ALVARADO:** I was just a little mixed up
6 socially, you know, by choice I would have to say,
7 because my family with my mother and brothers and
8 sisters, whatever, were -- I was very close to them, and
9 I never lacked any love from any of them. But it was
10 just my choice.

11 **PRESIDING COMMISSIONER BRYSON:** Usually, solid
12 families are sort of a bulwark against gang
13 participation. So in your case, that didn't hold true.
14 Why did you get involved? Since you were, as you said,
15 close to your family, why did you get involved with the
16 gangs in the first place?

17 **INMATE ALVARADO:** Well, because once I started
18 socializing with my peers at that time, I tended to not
19 recognize other things around me, my loved ones, how I
20 would hurt my mother by getting arrested, and she would
21 have to come visit me. Those things I never really
22 realized that much. I was naïve to all that.

23 **PRESIDING COMMISSIONER BRYSON:** Uh-huh.

24 **INMATE ALVARADO:** Maybe in denial -- I don't
25 know. Later on in years, I realized my past, that it

1 was terrible as far as hurting loved ones behind my
2 acts. I once -- this time when I got arrested, I wrote a
3 letter to my nephew. He was in a county camp, juvenile
4 camp, and I was in the jailhouse. And I wrote a letter
5 to him and explaining everything, how my poor mother
6 used to have come walk and see me and the pain she was
7 going through. And I finally realized it, because I
8 didn't want him to do the same to my sister, his mother.
9 And somehow the letter got to his counselor over there,
10 and my sister was telling me that the counselor who got
11 it was impressed and had it printed in the newspaper
12 over there so others could read it and see it, you know.
13 And I felt good about that because I was sincere about
14 that. But it took -- I don't know -- years for me to
15 realize and being more of a compassionate person.

16 **PRESIDING COMMISSIONER BRYSON:** It did, because
17 your commitment offense occurred whenever you were 32
18 years old, so you lived quite a lifestyle for a very
19 long time. And when did you get involved with alcohol
20 and narcotics?

21 **INMATE ALVARADO:** Alcohol came into my life
22 probably when I was about 15, 14 -- already in high
23 school -- and drugs probably 17, 16, around there, again
24 by socializing with my peers and making wrong decisions,
25 and not realizing the effect that it had in store for

1 me.

2 PRESIDING COMMISSIONER BRYSON: Well, let's talk
3 about the first gang you affiliated with, ' Which gang
4 was that?

5 INMATE ALVARADO: Well, it was a neighborhood
6 gang. It was

7 PRESIDING COMMISSIONER BRYSON: What was it
8 called?

9 INMATE ALVARADO: The Mariachis.

10 PRESIDING COMMISSIONER BRYSON: The Mariachis?

11 INMATE ALVARADO: Yeah, The Mariachis.

12 PRESIDING COMMISSIONER BRYSON: Okay.

13 INMATE ALVARADO: And it only lasted maybe six,
14 seven months. And I believe I was released from
15 California Youth Authority, Casa Robles School For Boys,
16 when I was around 15 years old, 14. And being around
17 all the youth there that were there with me, I started
18 falling into the same type of thinking as everybody did
19 there. There was a lot of people there from Los
20 Angeles, and lots of gangs coming out of there, and I
21 just thought it was --

22 PRESIDING COMMISSIONER BRYSON: Did you think it
23 was cool?

24 INMATE ALVARADO: It was the thing to do, you
25 know, to be looked at as a leader.

1 PRESIDING COMMISSIONER BRYSON: And the
2 Mariachis were a prison gang in CYA?

3 INMATE ALVARADO: No, it was an outside gang.
4 It wasn't an institutional gang.

5 PRESIDING COMMISSIONER BRYSON: Okay.

6 INMATE ALVARADO: I formed it as I got released
7 out of California Youth Authority, Casa Robles, and I --

8 PRESIDING COMMISSIONER BRYSON: Okay, so you
9 formed it. So how did you know how to form a gang?

10 INMATE ALVARADO: Well, because the -- it was a
11 way to associate with those that I grew up with. We
12 went to school together as elementary and so forth, and
13 we used to run around together anyway daily or whenever
14 we had the opportunity, and ride our bicycles through
15 the barrios.

16 PRESIDING COMMISSIONER BRYSON: So how did you
17 know -- did you learn in CYA how to pattern a gang -- I
18 mean, you know, how to act, what to do about let's get
19 some colors, let's get handles or markers or whatever.
20 You know -- how did you decide what it was a gang did
21 and all those -- what did you pattern yourself after?
22 And this is just historical data, sir.

23 INMATE ALVARADO: Yes, I really didn't think of
24 those things. It just like -- it was almost just a
25 natural thing to do. It was simple just to get your

1 friends there, your associates, and talk to them and
2 tell them hey look, we're going to form a little group
3 here, more so for recognition, not so much for doing
4 crimes or trying to beat up other people -- just for our
5 own neighborhood recognition, I would guess probably for
6 the girls, to impress them or whatever, to feel secure a
7 little bit.

8 **PRESIDING COMMISSIONER BRYSON:** Well, the fact
9 is you did a lot of drunk driving through that period,
10 and then you got into narcotics during that period as
11 well. So what I want to know is how long was it the
12 Mariachis, and then when did you move on to another
13 gang, and what was that? I'm trying to get your gang
14 history here, sir.

15 **INMATE ALVARADO:** Well, the Mariachis only like
16 I mentioned, about nine months at the most.

17 **PRESIDING COMMISSIONER BRYSON:** Okay.

18 **INMATE ALVARADO:** It was a short era for us.

19 **PRESIDING COMMISSIONER BRYSON:** Okay.

20 **INMATE ALVARADO:** And the reason for that was
21 because we -- some of the members were a little bit out
22 of control and were looking at it as well, now we're a
23 gang, we're supposed to do this, and that wasn't the
24 case. And me being the leader, I had to let them know
25 that that wasn't the purpose of it. The purpose was for

1 just our recognition and to have a good time.

2 PRESIDING COMMISSIONER BRYSON: So did you do
3 any crimes at all with the Mariachis?

4 INMATE ALVARADO: No.

5 PRESIDING COMMISSIONER BRYSON: No crimes at
6 all?

7 INMATE ALVARADO: Well, perhaps maybe got into a
8 couple of fights with some other people.

9 PRESIDING COMMISSIONER BRYSON: Another rival
10 gang?

11 INMATE ALVARADO: Not really a gang, just
12 someone else. I recall one time we were at a party and
13 one of the members was dancing with one of the ladies
14 there, young ladies, and her jealous boyfriend or
15 whoever he was got mad and wanted to beat him up, and so
16 they went outside and they started fighting. We had all
17 that, and I was right there -- we were right there
18 watching it and looking at it and making sure nobody
19 would jump him and beat him all up. And I recall this
20 incident because when I was standing there, all of a
21 sudden this guy came up to me with a knife in his hand,
22 and he wanted to stab me. And I told him that I had
23 nothing to do with that, that was going on. So I
24 grabbed the stick to protect myself, and he came at me,
25 and I went to hit him with the stick. The stick broke.

1 I got scared because he had a big knife, and I ran and
2 he came after me. Well, to make a long story short, you
3 know, he ended up stabbing me. I got stabbed, and I
4 realized that there was more to it than just trying to
5 be friendly or just recognition.

6 **PRESIDING COMMISSIONER BRYSON:** So why didn't
7 that kick in then? It apparently kicked in at the
8 moment, but it didn't long term. Why didn't you say
9 this isn't for me -- the gang style isn't the style?
10 What made it still attractive and exciting for you to go
11 on and continue with gangs? And what was the next gang?
12 What was the next gang after the Mariachis?

13 **INMATE ALVARADO:** After that there was no more
14 gangs as far as membership. It was just running around
15 and being who I was, which was the person without
16 realizing that things that I was doing was not that
17 good.

18 **PRESIDING COMMISSIONER BRYSON:** So you were
19 never a member of the Nuestra Familia?

20 **INMATE ALVARADO:** Well, later on in life, I got
21 involved with it because I had family members that were
22 involved.

23 **PRESIDING COMMISSIONER BRYSON:** Okay, sir, I'm
24 trying to get you -- from the Mariachis, you said you
25 were only tied to them for about the nine months.

1 INMATE ALVARADO: Yes.

2 PRESIDING COMMISSIONER BRYSON: That takes us up
3 to about 1963.

4 INMATE ALVARADO: Yes.

5 PRESIDING COMMISSIONER BRYSON: So what was the
6 next gang that you associated with and when?

7 INMATE ALVARADO: It was the Nuestra Familia.

8 PRESIDING COMMISSIONER BRYSON: Okay, and when
9 was that approximately? Was that immediately afterwards
10 that you go into that?

11 INMATE ALVARADO: No, not immediately after.

12 PRESIDING COMMISSIONER BRYSON: Were you a
13 juvenile or an adult? Do you remember?

14 INMATE ALVARADO: I was an adult.

15 PRESIDING COMMISSIONER BRYSON: Okay. And why
16 did you get in with the Nuestra Familia?

17 INMATE ALVARADO: Okay, to the best of my
18 recollection, about 1971 or 1972 I had a god brother
19 that was in prison that probably was the founder of
20 Nuestra Familia here in Soledad. And at that same time,
21 I had a cousin that had already been in prison, and he
22 was a member of the Mexican Mafia.

23 PRESIDING COMMISSIONER BRYSON: Okay, that's MA?

24 INMATE ALVARADO: Yes.

25 PRESIDING COMMISSIONER BRYSON: Okay, go ahead.

1 **INMATE ALVARADO:** I was still in my
2 (indiscernible) to -- the rivalry with one another.
3 However, one day my god brother was released from San
4 Quentin on a three-day pass when they used to have those
5 three-day passes to get into society a little bit and
6 get the feel of the outside world for when they were
7 released. Anyway, I was talking to him and I had found
8 that the MA had tried to kill him in San Quentin a
9 couple of years earlier. He survived. I couldn't
10 understand what was going on, you know, why two family
11 members were, you know, to the point where they would
12 kill each other. I was brought up very close to both of
13 them when I was a toddler. And so I was talking to him
14 and he started explaining to me why the Nuestra Familia
15 was founded. At that time he told me that the reason it
16 was founded was because by this time the Mexican Mafia
17 was very powerful, and they were kind of like taking a
18 little advantage of the weaker.

19 **PRESIDING COMMISSIONER BRYSON:** So you're saying
20 Nuestra Familia was an offshoot then to try to take over
21 some of the power that the MA had?

22 **INMATE ALVARADO:** Well, I came to believe that
23 the reason it was founded at that time was because -- it
24 was founded in order to help people from being bullied
25 from the powerful Mexican Mafia.

1 PRESIDING COMMISSIONER BRYSON: I see. And the
2 NF was a street gang? Is that right?

3 INMATE ALVARADO: It was a prison gang.

4 PRESIDING COMMISSIONER BRYSON: It was a prison
5 gang.

6 INMATE ALVARADO: It was created in prison here
7 in Soledad, I believe.

8 PRESIDING COMMISSIONER BRYSON: Right. Okay, so
9 how do you account for -- that was when you were about
10 25 years old, but we dropped you off from the Mariachis
11 at about 17 or something like that. So what happened
12 between age -- or even earlier -- age 16? There was
13 almost ten years.

14 INMATE ALVARADO: Yes.

15 PRESIDING COMMISSIONER BRYSON: Were you a gang
16 member during that time, or what were you doing?

17 INMATE ALVARADO: Well, in 1971 when he was
18 explaining all this to me, he had asked me if I wanted
19 to get involved in Nuestra Familia.

20 PRESIDING COMMISSIONER BRYSON: I understand,
21 sir, but 1971 was a long way from 1962 when you said
22 that dropped -- basically you were only involved with
23 the Mariachis for about nine months.

24 INMATE ALVARADO: Yes.

25 PRESIDING COMMISSIONER BRYSON: So that was back

1 when you were --

2 INMATE ALVARADO: That was about '92 -- I mean
3 '62.

4 PRESIDING COMMISSIONER BRYSON: When you were
5 about 15.

6 INMATE ALVARADO: Yes.

7 PRESIDING COMMISSIONER BRYSON: So how do we get
8 you from 15 years old to 25 years old? What were you --
9 were you involved with a gang during that time period?

10 INMATE ALVARADO: No, I wasn't.

11 PRESIDING COMMISSIONER BRYSON: But you were
12 doing crimes. You were doing -- mainly they had to do
13 with drunk and disorderly, battery, marijuana, dangerous
14 drugs. So a lot of drunk crimes and jail time and
15 driving suspended. So let's look at your social history
16 and try to tie in these time frames. You were born in
17 Texas. Is that right?

18 INMATE ALVARADO: Yes.

19 PRESIDING COMMISSIONER BRYSON: Okay. And you
20 stayed there until three, and then your father
21 unfortunately died in 1947. Your mother remarried to
22 Mr. Estrada and moved to California in 1949. You have
23 four brothers, Ruben, Raymond, Richard and Sammy
24 Alvarado, and two sisters, Yolanda and Marylou.

25 INMATE ALVARADO: Yes.

1 PRESIDING COMMISSIONER BRYSON: And are they all
2 still living and well?

3 INMATE ALVARADO: Except one brother.

4 PRESIDING COMMISSIONER BRYSON: I'm sorry.

5 INMATE ALVARADO: Yes.

6 PRESIDING COMMISSIONER BRYSON: Okay. And which
7 brother did you lose then?

8 INMATE ALVARADO: Ruben.

9 PRESIDING COMMISSIONER BRYSON: Ruben? I see.

10 INMATE ALVARADO: The next oldest one.

11 PRESIDING COMMISSIONER BRYSON: I see. And you
12 lost your mother and your stepfather at some point then
13 in '77 and --

14 INMATE ALVARADO: Yes.

15 PRESIDING COMMISSIONER BRYSON: Okay, in 1980.
16 Okay, it says that -- but it really doesn't give a good
17 time frame that's on this -- but you entered a common
18 law relationship with Ms. Eva Robinson and had a son,
19 Antonio. Is that correct?

20 INMATE ALVARADO: Yes.

21 PRESIDING COMMISSIONER BRYSON: Okay. Let's see
22 -- that was in 1977, so that was just two years before
23 the commitment offense. So it says you completed the
24 11th grade in East Bakersfield High School at 17.

25 INMATE ALVARADO: Yes.

1 PRESIDING COMMISSIONER BRYSON: What made you
2 drop out of high school at that very late time? Was
3 that because of your time in CYA?

4 INMATE ALVARADO: Yes.

5 PRESIDING COMMISSIONER BRYSON: Okay, but you
6 did get your GED in CYA, I see.

7 INMATE ALVARADO: I got it in Tracy.

8 PRESIDING COMMISSIONER BRYSON: Oh, you got it
9 at Tracy? Oh, that's right -- DVI.

10 INMATE ALVARADO: Yes.

11 PRESIDING COMMISSIONER BRYSON: Okay, thank you.

12 And then you entered West Valley College, it says --

13 INMATE ALVARADO: Yes.

14 PRESIDING COMMISSIONER BRYSON: -- for two
15 semesters. Were you planning in going after an AA then?

16 INMATE ALVARADO: Yes, I was trying a major in
17 x-ray technician.

18 PRESIDING COMMISSIONER BRYSON: I see.

19 INMATE ALVARADO: Yes.

20 PRESIDING COMMISSIONER BRYSON: Then you were
21 employed. This little biography jumps back and forth
22 basically. It shows you as having some employment at a
23 poultry farm, and Del Monte in San Jose.

24 INMATE ALVARADO: Yes.

25 PRESIDING COMMISSIONER BRYSON: Cannery worker,

1 and a Good Will janitorial custodian in San Jose
2 part-time. And then, so basically I'm still trying to
3 account for -- in your social activities. And the
4 reason I'm doing this, sir, is because you have to know
5 that it's quite unusual for a person of 25 through age
6 32 actually to be involved in gangs, and I'm trying to
7 understand why you were. Were you a major player? Is
8 that why you were?

9 **INMATE ALVARADO:** No, I wasn't a major player.
10 I really didn't realize what I was really getting into,
11 the magnitude of it, what had to be done and what didn't
12 have to be done, the taking of orders. As I was
13 explaining in the beginning, I came to believe that it
14 was founded to try to help others from being bullied,
15 being pressured or whatever. But that wasn't the case,
16 and I come to realize that it was more to it than that
17 as time progressed. But by that time, I had also
18 realized that this wasn't a little street -- a small
19 street gang. It was more organized as far as their
20 little rules or bylaws, and it was said that once you
21 were in, that, you know, you're in. It's not come in
22 and get out whenever you want.

23 **PRESIDING COMMISSIONER BRYSON:** So what did you
24 do to get inducted into the NF?

25 **INMATE ALVARADO:** I did nothing. It was my --

1 that's why I looked at it so lightly from the very
2 beginning, because my god brother, he said okay, you're
3 a member, just like that. And I stood there like I
4 couldn't believe it. And then I said well, he's
5 supposed to be the big man, I guess he can do that. You
6 know, he's supposedly the godfather, so --

7 **PRESIDING COMMISSIONER BRYSON:** So what did you
8 do with the gangs then?

9 **INMATE ALVARADO:** I didn't really associate with
10 them too much because I hadn't been to prison. I didn't
11 really know the members that got involved in prison.
12 And living in Bakersfield, there wasn't that many
13 members out there.

14 **PRESIDING COMMISSIONER BRYSON:** So what was your
15 function? Why join them if you're not going to be doing
16 anything? So what was the point there?

17 **INMATE ALVARADO:** I didn't know then. I took
18 everything so lightly like it wasn't that big of a
19 thing.

20 **PRESIDING COMMISSIONER BRYSON:** Did you traffic
21 drugs?

22 **INMATE ALVARADO:** No, I didn't.

23 **PRESIDING COMMISSIONER BRYSON:** Did you traffic
24 arms?

25 **INMATE ALVARADO:** No, I didn't.

1 **PRESIDING COMMISSIONER BRYSON:** Okay, what did
2 you do with them during that time period? Because you
3 were active with the gangs. I believe you debriefed
4 here. Is that not correct?

5 **INMATE ALVARADO:** Yes.

6 **PRESIDING COMMISSIONER BRYSON:** So that by
7 definition is some activity. So what were you doing in
8 the gang if you weren't doing anything?

9 **INMATE ALVARADO:** I was -- towards the end I was
10 running around with a couple of them just there in the
11 neighborhood, but never in any activities that I
12 remember of doing crime together.

13 **PRESIDING COMMISSIONER BRYSON:** No crimes
14 together?

15 **INMATE ALVARADO:** No.

16 **PRESIDING COMMISSIONER BRYSON:** 32 years old.
17 You have to understand, this is a little difficult.
18 You're an unusual profile.

19 **INMATE ALVARADO:** Yes.

20 **PRESIDING COMMISSIONER BRYSON:** Okay. All
21 right. Well, if you'll turn your attention now to
22 Commissioner Enloe, she'll talk about your
23 post-conviction factors.

24 **DEPUTY COMMISSIONER ENLOE:** All right, good
25 morning, Mr. Alvarado.

1 INMATE ALVARADO: Good morning.

2 DEPUTY COMMISSIONER ENLOE: How are you today?

3 INMATE ALVARADO: Fine, thank you.

4 DEPUTY COMMISSIONER ENLOE: During this portion
5 of the hearing, what I'll be doing is putting on record
6 a lot of information I gathered by looking through all
7 the documents that I have here in front of me. Your
8 Central File is here, the Board Reports, and I have a
9 transcript of the last hearing. And I've reviewed all
10 these things. And at the conclusion of my portion, I'll
11 give you and your attorney an opportunity to make any
12 additions or clarifications of anything I've said. And
13 my major focus here will be on the time period between
14 your last Board hearing and today, and in a few areas
15 I'll reach outside that. But I'll start with your last
16 Board hearing, and that was June 15th of 2004 -- well,
17 actually, that's when your last hearing was scheduled.
18 At that time you stipulated to a two-year denial. You
19 were actually in front of the Board personally March
20 28th, 2000, at which time you received a four-year
21 denial.

22 INMATE ALVARADO: Yes.

23 DEPUTY COMMISSIONER ENLOE: So actually, I'll
24 try to cover that time period. Reviewing your file
25 today, your custody level is shown as Medium A, with a

1 Classification Placement Score of 19, which is the
2 lowest that you can achieve. Your assignment, are you
3 currently with the PIA wood products machine operator
4 position?

5 INMATE ALVARADO: Yes.

6 DEPUTY COMMISSIONER ENLOE: That's your current
7 assignment? Somewhere I saw laundry room, and I was a
8 little bit confused. But I also show that you had some
9 previous jobs as a furniture finisher and as a dish
10 washer, line server during this time period.

11 INMATE ALVARADO: Yes.

12 DEPUTY COMMISSIONER ENLOE: And then there was a
13 period where you were unassigned, and I was trying to
14 figure that part out. In 2006 for a while, you were
15 unassigned, according to the classification?

16 INMATE ALVARADO: Very briefly, not for too
17 long.

18 DEPUTY COMMISSIONER ENLOE: Okay, so you
19 basically --

20 INMATE ALVARADO: Probably maybe a month or
21 three weeks.

22 DEPUTY COMMISSIONER ENLOE: How long have you
23 been in the current assignment approximately?

24 INMATE ALVARADO: About 13 months, around there.

25 DEPUTY COMMISSIONER ENLOE: 13 months, okay.

1 And I did find satisfactory work reports, a few above
2 averages. And as I look through the other jobs that I
3 mentioned, furniture finisher, dish washer, line server,
4 etcetera, it seemed to be satisfactory to above average
5 work reports. So you're doing well. One other thing --
6 I do want to note for the record that you had two other
7 schedule appearances before the Board. One was August
8 16th of 2006, and one was January 4, 2007. Both times
9 your hearing was postponed because the psychiatric
10 evaluation had not been completed as ordered by the June
11 15th, 2004 panel. So just so that we have a full record
12 of that. Educationally, I think that's already been put
13 on the record that you did obtain your GED in 1982 at
14 DVI?

15 **INMATE ALVARADO:** I believe so, yes.

16 **DEPUTY COMMISSIONER ENLOE:** And there is a copy
17 in your file. I found this. And vocationally, I do
18 find a copy of your completion of vocational silk
19 screening, and that was in 2000.

20 **INMATE ALVARADO:** Yes, Commissioner.

21 **DEPUTY COMMISSIONER ENLOE:** Self-help -- it
22 looks like you've been participating in Alcoholics
23 Anonymous. There are several chronos in here. And
24 there are several other chronos that I definitely want
25 to cover. And also, I think there were some provided in

1 the Board packet, but they're duplicated because they're
2 in your Central File. And participation in AA -- you've
3 been doing that -- well, is it NA or AA? It's NA?

4 INMATE ALVARADO: Presently I'm in NA right now,
5 yes.

6 DEPUTY COMMISSIONER ENLOE: Okay, so you're
7 going through NA classes now.

8 INMATE ALVARADO: Yes.

9 DEPUTY COMMISSIONER ENLOE: The last chrono was
10 April 11th, 2007. How long have you been participating
11 in that?

12 INMATE ALVARADO: It took me about a year to get
13 into it, but it's been about three, four months that
14 I've been into it.

15 DEPUTY COMMISSIONER ENLOE: So that's the most
16 recent?

17 INMATE ALVARADO: Yes, on the NA.

18 DEPUTY COMMISSIONER ENLOE: All right. And then
19 I have a chrono that's dated 4/2/07, that's signed by
20 Oga (phonetic) Chavez, C-H-A-V-E-Z, sponsor, Father
21 Behind Bars group. And this documents that there was an
22 organized donation drive for the Soledad Junior ROTC
23 Drill Team in Pensacola, Florida, and that you responded
24 with voluntary contributions for this worthy cause. And
25 your donation and those of your fellow members

1 represented genuine sacrifice. So it looks like the
2 total contribution that was raised was approximately a
3 thousand dollars. So this is to commend you to assist
4 in that contribution.

5 **INMATE ALVARADO:** Thank you. It was my
6 pleasure.

7 **DEPUTY COMMISSIONER ENLOE:** December 29th, 2006,
8 there's a chrono signed by Charlie Walker, common
9 spelling, and this identifies your voluntary
10 participation in three hours of video instruction and
11 discussion of issues related to successfully re-engaging
12 into society. And another December 29th, 2006 chrono,
13 actually signed by the same person, Charlie Walker.
14 This one talks about your voluntary participation in
15 three hours of inmate employability program. It was a
16 video review that also seems to be assisting in anger
17 management issues and re-integrating into society as a
18 productive citizen. June 9th, 2006, a similar chrono
19 signed by the same person, Charlie Walker, and this has
20 to do with the three hours of video instruction and
21 discussion of issues related to successfully re-engaging
22 into society. So this was similar to the other one?

23 **INMATE ALVARADO:** Yes.

24 **DEPUTY COMMISSIONER ENLOE:** A different set of
25 videos?

1 INMATE ALVARADO: Yes.

2 DEPUTY COMMISSIONER ENLOE: And an anger
3 management and inmate employability program. This also
4 must be similar, but I'm assuming it's a different set
5 as well?

6 INMATE ALVARADO: Yes.

7 DEPUTY COMMISSIONER ENLOE: The chronos is
8 signed by the same person, Charlie Walker, and it's
9 voluntary participation in three hours of the video
10 related to anger management. And then I have a chrono
11 dated July 25th, 2005. And this talks about the
12 Alcoholics Anonymous group. So am I assuming that
13 you're current in NA?

14 INMATE ALVARADO: Yes.

15 DEPUTY COMMISSIONER ENLOE: So are you still
16 continuing in AA as well, or did you switch?

17 INMATE ALVARADO: I didn't switch. I'm still
18 waiting to get --

19 DEPUTY COMMISSIONER ENLOE: To get back in the
20 other one?

21 INMATE ALVARADO: Yes.

22 DEPUTY COMMISSIONER ENLOE: Okay, so you have
23 two, AA and NA separately.

24 INMATE ALVARADO: Yes.

25 DEPUTY COMMISSIONER ENLOE: And it talks about

1 your vocational. Excuse me, I just wanted to make sure
2 I covered the ones that are in your file in the Board
3 Report issue. I believe I have. Actually, there are
4 some training certificate chronos that are provided.
5 You participated in a number of training. This has to
6 do with the machine shop program, I believe. There's
7 one called Finishing One. There are two that are called
8 Finishing chronos. They're dated 4/5/06. They're all
9 related to finishing. One's called MSDS, Right to Know,
10 and that's safety and lookout tag-out, air, eyes and
11 sound, general safety. So there's several, and these
12 are all related to your assignment. Is that correct, in
13 machine operator?

14 **INMATE ALVARADO:** Yes.

15 **DEPUTY COMMISSIONER ENLOE:** And I talked about
16 the other ones that are in here. Disciplinarys, there
17 are 20 total CDC 115s in your file, but there are zero
18 since your last one, which was in July of 1993. That
19 was for possession of pruno. So you've been
20 disciplinary free since 1993.

21 **INMATE ALVARADO:** Yes, I have, Commissioner.

22 **DEPUTY COMMISSIONER ENLOE:** And 128As, I found
23 nine total. The last one was in 2005, July, for
24 refusing to report to work. Anything I've missed about
25 your other self-help programs? Any other vocations,

1 work reports? Have I covered that for the time period?

2 **INMATE ALVARADO:** It seems you have.

3 **DEPUTY COMMISSIONER ENLOE:** If you think of
4 something else, be sure and let us know. And at this
5 point then, I'll turn to the most recent psychological
6 evaluation. And that report was prepared by Richard
7 Starrett, S-T-A-R-R-E-T-T, contract psychologist, and
8 it's dated December 28, 2006. And on that report,
9 actually turn to page 10, under assessment of
10 dangerousness, the doctor discusses how he assessed the
11 dangerousness. He uses a number of research risk
12 factors, and history of violence was one of them, and
13 prior performance, the inmate's compliance with Board
14 request and treatment, substance abuse, mental health
15 issues, clinical insight, environmental risks and risk
16 management. And he's mentioned several things under
17 these categories to base how he came to his conclusions.
18 But I'm going to read into the record on page 11 under
19 clinical insight, the doctor wrote:

20 "The inmate accepts responsibility for
21 the crime. He does have some insight
22 and does express remorse. In rating
23 this individual in the clinical factor,
24 he would rate in the moderate range for
25 future violence. This rating is based

1 on the fact that the inmate has not been
2 continuously involved in NA, AA or
3 self-help, reflecting a possible
4 negative attitude in this area. There
5 also is a discrepancy between his
6 account and the file account."

7 And under the environmental risks and risk management
8 section, the doctor wrote:

9 "The inmate would rate in the moderate
10 range in terms of his risk management
11 for the future. Until 1993, the inmate
12 had problems handling stress, compliance
13 and destabilizers in the institutional
14 environment. His parole plans need a
15 little more development in terms of job
16 offers. On the positive side, the
17 inmate has been programming positively
18 since 1993. In summary, this
19 individual's propensity to commit
20 violence in the future when compared to
21 similar violent inmates has gone down
22 from the high range down into the
23 moderate range at the current time.
24 This rating will continue to decrease as
25 the inmate is continuously involved in

1 AA, NA and self-help."

2 And then on the last page of the report, under clinician
3 observations, comments and recommendations, the doctor
4 wrote:

5 "It is recommended that the inmate
6 continue to be discipline free. It is
7 recommended that the inmate continue to
8 program positively vocationally and
9 educationally. It is recommended that
10 the inmate be continuously involved in
11 his religion, self-help groups and AA or
12 NA, or both."

13 And so at this point, any comments or additions that you
14 would like to make?

15 **INMATE ALVARADO:** Not at this time,
16 Commissioner. Thank you.

17 **DEPUTY COMMISSIONER ENLOE:** Counsel?

18 **ATTORNEY HALL:** No, thank you.

19 **DEPUTY COMMISSIONER ENLOE:** Then let's turn our
20 focus back to the chair. Commissioner Bryson?

21 **PRESIDING COMMISSIONER BRYSON:** Thank you. Sir,
22 what religion are you involved in?

23 **INMATE ALVARADO:** Roman Catholic.

24 **PRESIDING COMMISSIONER BRYSON:** In the Roman
25 Catholic? Okay. And do you go to services?

1 **INMATE ALVARADO:** Yes, I do, Commissioner.

2 **PRESIDING COMMISSIONER BRYSON:** Do you do
3 anything else that we should note as far as the church
4 goes, besides go to services? Are you playing a role in
5 the church in a major way?

6 **INMATE ALVARADO:** No, but I'm willing to
7 participate on whatever they have that might need some
8 help or something like that.

9 **PRESIDING COMMISSIONER BRYSON:** I understand.
10 Thank you. Sir, why did you debrief?

11 **INMATE ALVARADO:** Because by this time, I had
12 realized that without a doubt that it wasn't the right
13 thing to do, to be involved, to participate in any
14 activities that might present themselves to me.

15 **PRESIDING COMMISSIONER BRYSON:** Why not? What
16 was wrong with it?

17 **INMATE ALVARADO:** Because by this time now, as
18 the years passed by, I had matured a little bit more and
19 come to realize that that's not what society's about.
20 That's not what (indiscernible) it's about. That's not
21 what it's about with me anymore. It's --

22 **PRESIDING COMMISSIONER BRYSON:** Okay. And we
23 honor your right not to speak about the crime, but what
24 I'd like to ask is after these years have gone by and
25 you've had time to reflect on the commitment offense as

1 well as your criminal history, as well as what's gone on
2 in prison, how are you a different man today than the
3 man who shot and knifed people? And how do you view
4 that? Where do you put in your mind what went on then,
5 and how do you represent to this panel that you're a
6 different person today?

7 **INMATE ALVARADO:** I'm a different person today.
8 I strongly believe I'm a different person today because
9 I've matured more and realized what I did was not right
10 at all, and especially taking the life of another human
11 being, which I strongly believe no one in any
12 circumstance have the right to do that. Even at war, I
13 don't think another human being has the right to kill a
14 man. I don't think we're put on this earth for that, to
15 have that right by any means. I did those things
16 perhaps because I was under the influence, perhaps
17 because I felt maybe I needed to, to protect myself.
18 But either way, it wasn't right. And I can't turn back
19 the time, but it's just something that I'll have to live
20 with for the rest of my life, for the victims, the
21 victims' family, and myself.

22 **PRESIDING COMMISSIONER BRYSON:** Okay. You do
23 have support from your fiancé. Is that Eva Robinson?

24 **INMATE ALVARADO:** Yes, that's the one that had
25 the child, maybe been around for about 40 years, I

1 think.

2 PRESIDING COMMISSIONER BRYSON: I see. So you
3 had a son. Is that correct?

4 INMATE ALVARADO: Yes, junior.

5 PRESIDING COMMISSIONER BRYSON: Okay, and are
6 you in communication with him?

7 INMATE ALVARADO: Yes, I am.

8 PRESIDING COMMISSIONER BRYSON: How's he doing?

9 INMATE ALVARADO: Good. Not the best, but he's
10 doing all right, you know.

11 PRESIDING COMMISSIONER BRYSON: What's he doing?

12 INMATE ALVARADO: Right now he does like
13 construction work on houses, carpentry work. And he's
14 doing okay.

15 PRESIDING COMMISSIONER BRYSON: Is he involved
16 in gangs or drugs?

17 INMATE ALVARADO: Oh, no -- no. No, he's not.

18 PRESIDING COMMISSIONER BRYSON: We do have a
19 letter from Eva J. Robinson.

20 INMATE ALVARADO: Yes.

21 PRESIDING COMMISSIONER BRYSON: And the most
22 recent letter is dated March 19th of 2007. And she says
23 she broadly supportive of you, and it says:

24 "Will support him spiritually, as well
25 as my means possible in order for him to

1 stream out into society constructively.

2 I'll provide his needed transportation

3 for his search of employment."

4 And she believes you're not a threat or risk to the
5 public. Now, sir, the Board packet that we referenced
6 -- actually, it's not a Board packet we've yet
7 referenced. The most current Board packet that we have
8 is actually that of June of 2006, and that was prepared
9 by P.O. Taporco, T-A-P-O-R-C-O, on September 1st of
10 2006. And on page -- I believe it's page 2 of that
11 Board packet report, it says that you plan to live with
12 your fiancé in San Jose. It gives her address. But
13 she doesn't really reference your living with her in
14 this letter, which is of some concern. And she
15 identifies herself, or at least the type writer
16 identifies her as being the mother of your adult son.

17 **INMATE ALVARADO:** Uh-huh.

18 **PRESIDING COMMISSIONER BRYSON:** So you're
19 representing that you would live with her? Is that your
20 plan for residence?

21 **INMATE ALVARADO:** Yes, Commissioner.

22 **PRESIDING COMMISSIONER BRYSON:** I see. And you
23 haven't lived together on the outside. Is that correct?

24 **INMATE ALVARADO:** Yes, we have.

25 **PRESIDING COMMISSIONER BRYSON:** Oh, you have?

1 INMATE ALVARADO: Yes.

2 PRESIDING COMMISSIONER BRYSON: Okay, you did
3 live together then?

4 INMATE ALVARADO: Yes.

5 PRESIDING COMMISSIONER BRYSON: Okay. Okay, the
6 inference may be drawn from this letter that perhaps she
7 would support you coming and living with her. It's just
8 not explicitly stated, but as I said before, she would
9 assist with your needed transportation as well, and also
10 your search for employment. We also have a letter from
11 Danielle K. Robinson, who is your stepdaughter
12 apparently.

13 INMATE ALVARADO: Yes.

14 PRESIDING COMMISSIONER BRYSON: And says also
15 your friend, which I thought was instructive. Again,
16 using the same language, would support you spiritually
17 as well as any means possible in order for you to stream
18 out into society constructively, as well as provide
19 transportation in your search for employment. And she
20 also states, "I can also assist him in possibly
21 obtaining classes at Deanza Foothill Community College,"
22 and does not believe you're a threat. We also have a
23 support letter from your sister, Yolanda Neri, N-E-R-I.
24 Is that correct?

25 INMATE ALVARADO: Yes, it is.

1 PRESIDING COMMISSIONER BRYSON: Okay. And --

2 INMATE ALVARADO: Excuse me, Commissioner.

3 PRESIDING COMMISSIONER BRYSON: Yes.

4 INMATE ALVARADO: I'm surprised, because I've
5 never got one, so --

6 PRESIDING COMMISSIONER BRYSON: Oh, okay.

7 INMATE ALVARADO: I didn't even know that it was
8 in there.

9 PRESIDING COMMISSIONER BRYSON: Yes, it's in the
10 Board packet.

11 INMATE ALVARADO: Well, that's nice.

12 PRESIDING COMMISSIONER BRYSON: Yes, it is very
13 nice. It's dated August 14th of 2006, and writes a
14 letter to say -- in fact, we'll make sure that you get
15 this copy of this letter so that you have a copy.

16 INMATE ALVARADO: Thank you.

17 PRESIDING COMMISSIONER BRYSON: And she says
18 you're her brother, Antonio.

19 " -- known to me as Tony, and she said
20 we speak over the phone. When I'm able
21 to, I go visit him in person. He's
22 nearly 60 years old. He's expressed
23 deep love for his children and
24 grandchildren, calling them often. He
25 desires to be around them when they grow

1 up. I personally have committed myself
2 to being a support to my brother if he's
3 granted parole. I'll be there for him
4 to assist him in looking for job
5 placement, a place to stay, and he of
6 course is welcome to parole here to my
7 home. My daughter is the wife of a
8 pastor of a thriving ministry, Victory
9 Outreach International, specializing in
10 inner city work. They have three
11 recovery homes, and one re-entry home
12 for men. The re-entry home assists men
13 to re-enter society. They also help
14 with job search and offer daily
15 counseling. They're a great support
16 group for such individuals as
17 Mr. Alvarado."

18 Which is really interesting, because for a while she
19 refers to you as Tony, but then she goes into a little
20 more formal mode, probably thinking that's really
21 appropriate, and calling you Mr. Alvarado. She says:

22 "I feel Mr. Alvarado will have great
23 support out here, and has a good chance
24 of a successful life in his senior
25 years. Please consider my request in

1 giving my brother a chance."

2 **INMATE ALVARADO:** Well, that's nice.

3 **PRESIDING COMMISSIONER BRYSON:** That's very
4 nice. So it does appear that you have a couple of
5 residential offers, and certainly offers assisting with
6 employment. What would be your employment plans given
7 your background?

8 **INMATE ALVARADO:** Well, I have a couple of
9 skills, but any type of labor employment that comes my
10 way, I'm willing to tackle with it and work with it. As
11 I say, one dollar is better than not having one dollar.
12 So until I get something better or whatever. But as far
13 as employment, I believe that a person, if he or she
14 wants to work, there's work out there to be done.

15 **PRESIDING COMMISSIONER BRYSON:** Okay. Do you
16 recognize the great competition that's out there now for
17 jobs?

18 **INMATE ALVARADO:** Sure. That's why I have that
19 saying, I'd rather have a dollar than no dollar,
20 meaning, you know, that the rate of pay will be relevant
21 to some extent for me because some money is better than
22 no money.

23 **PRESIDING COMMISSIONER BRYSON:** Well, sir, in
24 fact that philosophy is espoused by a lot of criminals
25 too. In fact, that's why we're going through this,

1 partly to ensure that that's not how you're going to get
2 your dollar.

3 INMATE ALVARADO: No, I don't mean it in that
4 sense.

5 PRESIDING COMMISSIONER BRYSON: Okay.

6 INMATE ALVARADO: I mean it in a broader sense.

7 PRESIDING COMMISSIONER BRYSON: I understand.

8 INMATE ALVARADO: In a society sense.

9 PRESIDING COMMISSIONER BRYSON: But that's why
10 we're concerned that you do have skills that are
11 immediately applicable into the job market, because even
12 with a lot of skills, it's tough competition out there
13 now.

14 INMATE ALVARADO: Well, like I was telling my
15 attorney here, Mr. Hall, you know, I've been
16 incarcerated almost 29 years.

17 PRESIDING COMMISSIONER BRYSON: Right.

18 INMATE ALVARADO: And for an employer to send me
19 a letter and say yes, I have a job for you, it's very
20 far and few that that will happen. I myself, if I was
21 an employer and somebody was being released for a murder
22 charge, or even just being in prison for that length of
23 time, I would really have reservations on just really
24 opening my arms to that person.

25 PRESIDING COMMISSIONER BRYSON: Uh-huh.

1 INMATE ALVARADO: And willing to hire him,
2 although I would interview him. But that's why I don't
3 have any employment right now because of that reason.

4 PRESIDING COMMISSIONER BRYSON: Okay, I will
5 tell you we do have inmates come in here with firm job
6 offers.

7 INMATE ALVARADO: Yes.

8 PRESIDING COMMISSIONER BRYSON: But it is
9 difficult to get.

10 INMATE ALVARADO: Yes.

11 PRESIDING COMMISSIONER BRYSON: We understand
12 that. Also, have you thought about following up on the
13 offer that your sister made as far as she spoke -- it
14 references actually an actual place.

15 INMATE ALVARADO: Yes.

16 PRESIDING COMMISSIONER BRYSON: Is there a
17 potential, do you think, for your actually going to a
18 transition housing project-type program --

19 INMATE ALVARADO: Sure.

20 PRESIDING COMMISSIONER BRYSON: -- as opposed to
21 just going directly to your fiancé?

22 INMATE ALVARADO: Sure.

23 PRESIDING COMMISSIONER BRYSON: Okay. That
24 would be an option for you.

25 INMATE ALVARADO: Sure.

1 PRESIDING COMMISSIONER BRYSON: Would you plan
2 to continue AA or NA on the outside?

3 INMATE ALVARADO: Yes, I went to NA/AA out there
4 before.

5 PRESIDING COMMISSIONER BRYSON: Oh, you did?

6 INMATE ALVARADO: Yeah.

7 PRESIDING COMMISSIONER BRYSON: Well, sir, it
8 didn't help, did it?

9 INMATE ALVARADO: Well --

10 PRESIDING COMMISSIONER BRYSON: Okay. So do you
11 live the twelve steps?

12 INMATE ALVARADO: Yes, I do.

13 PRESIDING COMMISSIONER BRYSON: Okay. Do you
14 know them all?

15 INMATE ALVARADO: No, I don't know them. I
16 can't recite them to you, but I do recall --

17 PRESIDING COMMISSIONER BRYSON: You can't recite
18 them, sir?

19 INMATE ALVARADO: No, I can't recite them.

20 PRESIDING COMMISSIONER BRYSON: After 29 years?

21 INMATE ALVARADO: I'm not a recital person. But
22 this much I will say -- years ago when I was out there
23 and I went to AA, and I remember my sponsor, Ranice
24 (phonetic) out of Bakersfield. He's a recovered
25 alcoholic. And --

1 PRESIDING COMMISSIONER BRYSON: You know what?

2 Excuse me.

3 INMATE ALVARADO: Yes.

4 PRESIDING COMMISSIONER BRYSON: You're a very
5 good talker. You are, okay?

6 INMATE ALVARADO: Well --

7 PRESIDING COMMISSIONER BRYSON: Do you know what
8 you're doing? You're talking -- just a minute, let me
9 say this.

10 INMATE ALVARADO: Yes.

11 PRESIDING COMMISSIONER BRYSON: You're talking
12 because it's a way to transition because it's a way to
13 transition out of the questions I'm going to ask you.

14 INMATE ALVARADO: Well, I want to answer your
15 question, Commissioner.

16 PRESIDING COMMISSIONER BRYSON: Okay. And I
17 can't figure out for the life of me why you haven't put
18 in your heart those twelve steps. Because how on earth
19 do you think this panel is going to believe that you can
20 use those twelve steps if you don't know them? How do
21 you practice them every day if you don't know them?

22 INMATE ALVARADO: I practice them in this way --
23 I remember -- to take inventory on the things that I do,
24 to make amends to those people that I've done wrong to
25 -- the most important ones. And another one is that I

1 know it's bad for me mentally and physically. And last,
2 not wanting to drink no more. I haven't had a drink in
3 a long time, and I'm not going to. The last time I was
4 in Board, the Commissioner asked me how could she be
5 sure that I wouldn't get another 115 for pruno, and I
6 said because I don't drink anymore, and because I won't
7 associate myself with anyone that is either making it or
8 drinking it. That's why. And today I haven't got
9 another one.

10 **PRESIDING COMMISSIONER BRYSON:** Okay, sir, good
11 work. All right. Have I missed anything, counsel, as
12 far as parole plans?

13 **ATTORNEY HALL:** No.

14 **PRESIDING COMMISSIONER BRYSON:** Thank you. All
15 right. We've sent out 3042 Notices. Those notices go
16 to agencies having a direct interest in your case. We
17 do have a letter of May 16th, 2007 from San Jose Police
18 Department. This is prepared by Robert L. Davis, the
19 Chief of Police. And I quote, beginning in paragraph 2:

20 "Antonio Alvarado and William Romo were
21 reputed to be dropouts from the Nuestra
22 Familia prison gang. In retaliation for
23 their lack of support and respect, the
24 Nuestra Familia placed both individuals
25 on a hit list. On January 6th of 1979,

1 Antonio Alvarado killed William Romo by
2 shooting him six times with a
3 small-caliber handgun. This murder was
4 completed in an attempt by Alvarado to
5 have his name removed from the prison
6 gang's hit list. In taking into account
7 the nature of the crime and considering
8 the totality of the circumstances, I
9 would recommend against the parole of
10 Antonio Alvarado, as he is not suitable
11 at this time. Further, I would
12 recommend that Mr. Alvarado serve the
13 maximum prescribed by law."

14 We do have a representative of the Santa Clara County
15 District Attorney's Office present who will have the
16 opportunity to make a statement regarding parole
17 suitability prior to the conclusion of this hearing.
18 And Mr. Rico is present on video conference. And first
19 let me ask, Commissioner, do you have any questions of
20 this inmate regarding any issue?

21 **DEPUTY COMMISSIONER ENLOE:** No, thank you.

22 **PRESIDING COMMISSIONER BRYSON:** All right. Does
23 the District Attorney have questions of this inmate?

24 **DEPUTY DISTRICT ATTORNEY RICO:** Commissioner,
25 the only questions that I have would pertain to the life

1 crime, and since Mr. Alvarado chooses not to talk in
2 that regard, I have no questions.

3 PRESIDING COMMISSIONER BRYSON: Thank you. And
4 counsel, do you have any questions of the inmate?

5 ATTORNEY HALL: Yes. Mr. Alvarado, in
6 conversations you and I had, you talked about your
7 desire to do charity work on the outside. Would you
8 share some of that with the panel, some of the things
9 that you would like to do in terms of talking to young
10 people?

11 INMATE ALVARADO: Yes, I believe that within
12 myself I could present some influence, some positive
13 influence on the younger youth about crime, gangs, loved
14 ones that they could hurt, to come to realize that if
15 they take that path, that it's not good and never will
16 be good. As far as charity work, I've grown to be more
17 of a compassionate person. I would love to help people
18 that are in need of help, the elderly, the disabled, the
19 raising of funds to incorporate something positive for
20 those in need. I would be rewarded just doing that job,
21 unmeasurably.

22 ATTORNEY HALL: And to clarify something for me,
23 have you in fact taken any college courses or no?

24 INMATE ALVARADO: Here in prison?

25 ATTORNEY HALL: At any time.

1 **INMATE ALVARADO:** Oh, yes, at West Valley
2 College, yes, in Santa Clara County.

3 **ATTORNEY HALL:** And at this point, has the panel
4 covered everything that you've done since your last
5 hearing, or can you think of anything that was omitted?

6 **INMATE ALVARADO:** Yes, the Commissioner was
7 thorough enough to my recollection.

8 **ATTORNEY HALL:** Okay, thank you. I have no
9 further questions.

10 **PRESIDING COMMISSIONER BRYSON:** All right, thank
11 you. Then I'd like to invite the District Attorney to
12 make a closing statement.

13 **DEPUTY DISTRICT ATTORNEY RICO:** Thank you,
14 Commissioner. If I may, referring briefly to the facts
15 here of both crimes, I would point out, and again
16 referencing the probation report in this matter, the
17 first victim, Steven Romero, does seem to be involved in
18 provocative conduct that led up to the occurrence. But
19 the problem is that although the victim attempted to
20 gain entry to Mr. Alvarado's residence by kicking
21 through the front door, Mr. Alvarado armed himself with
22 a knife, a butcher knife. There was a fight, an
23 altercation inside the residence. Mr. Alvarado stabbed
24 the victim. The victim apparently was unarmed, was able
25 to free himself and ran from the apartment. And the

1 problem is that Mr. Alvarado pursued, again stabbing the
2 victim in the parking lot, and it was at that point that
3 the fatal wound, the stab to the chest area that pierced
4 the pulmonary artery, was inflicted. Now with the two
5 cases tying together, it would appear, at least
6 according to the probation report, that during the
7 subsequent investigation of Mr. Romero's killing, Billy
8 Romo, victim-to-be in count two, was contacted and
9 identified as a "friend" of Mr. Alvarado. And
10 apparently Mr. Romo supplied information to another
11 witness that the stabbing had occurred perhaps because
12 Mr. Alvarado had owed the victim two hundred dollars for
13 some reds. Whether that be true or not, Mr. Romo at
14 least had provided that information to someone else. So
15 one and a half years later, on January 6th of 1979,
16 Mr. Alvarado, who was drunk and apparently under the
17 influence of drugs as well, or at least having -- at the
18 time of his apprehension having morphine in his system
19 -- in any event, on that date, January 6th, 1979, he was
20 with Billy Romo. And as Mr. Alvarado became
21 increasingly inebriated, he began to make threats
22 against Mr. Romo, indicating that he planned to kill
23 him. The threats were not taken seriously since
24 apparently Mr. Alvarado was one to commonly make threats
25 such as these when under the influence of alcohol or

1 drugs. But at about 7:00 p.m. on that day, Mr. Alvarado
2 began to display a loaded 22-caliber pistol, which he
3 indicated was previously used in the killing by the
4 Nuestra Familia, and which had been given to him for
5 disposal. He then left the residence with the gun,
6 returned a short time later, apparently having shot
7 Mr. Romo eight times. And he then entered into the
8 bathroom area of the residence where he began to inject
9 heroine. Mr. Romo was found dead of multiple gunshot
10 wounds. And when Mr. Alvarado was subsequently arrested
11 early in the morning hours of January 7th, 1979 after
12 running a red light, he had a .23 percent blood alcohol
13 and the presence of morphine in his system. And I think
14 that letter in opposition from the San Jose Police
15 Department refers to the fact that Mr. Romo apparently
16 was an NF dropout, or at least attempting to
17 disassociate himself from the NF. He was on a hit list,
18 and there were witnesses during the investigation that
19 indicated it was known that the two disliked each other
20 for some reason, and there had possibly been an argument
21 over drugs. And since Mr. Alvarado had also
22 disassociated himself from the NF, it was indicated that
23 part of the motivation here may have been not only the
24 dislike for the victim, but an attempt to regain his own
25 status with the NF, or at least get off the hit list.

1 Now I've sat here during the hearing, and I've
2 listened to Mr. Alvarado, and quite frankly,
3 Mr. Alvarado, it's a very pleasant experience to listen
4 to him talk because he was young at the time of the
5 crimes relatively speaking in terms of his current age.
6 He was 32, so it's not that these prior crimes can be
7 written off to youthful indiscretion. He was a mature
8 adult in that sense, in his thirties at the time of this
9 crime, and it was making conscious choices. No doubt as
10 he sits there today, he is, as he indicates, more
11 mature. He is more relaxed, almost adopting the
12 attitude of perhaps an old warrior that wants to talk to
13 youth, wants to counsel them in the ways of the world,
14 perhaps indicating his own story, and perhaps very
15 well-intentioned, wanting them to go a different path
16 than perhaps he did. And that's a good thing. That's a
17 good motivation. But (indiscernible) is that
18 Mr. Alvarado unfortunately seems to be approaching
19 rehabilitation as a part-time avocation, doing it when
20 it suits him. He has not been enmeshed in, nor has he
21 embraced NA or AA. He participates occasionally. He's
22 been in NA, he indicates, for maybe three to four
23 months. I think the new psych report indicates that
24 he's been involved in AA for 18 months, perhaps on and
25 off over the years. But he's been in for going on 30

1 years, and to not know the steps, maybe he's not someone
2 that likes to recite things, memorize things. But he
3 seems very relaxed and casual in his approach, kind of
4 saying well, I'm getting older, I don't want to do this
5 anymore, everything's okay, I'm not going to offend.
6 Back in 1993, which is not that long ago given the total
7 term of his incarceration, he (indiscernible).

8 **PRESIDING COMMISSIONER BRYSON:** Excuse me. I
9 don't mean to interrupt you, Mr. Rico, but when you
10 shuffle those papers, it completely covers everything
11 you're saying.

12 **DEPUTY DISTRICT ATTORNEY RICO:** I'm sorry.
13 Sorry about that. I was looking for the date. I didn't
14 want to misquote. So I will refrain from finding that
15 particular date with my apology. I don't want to
16 misstate the evidence by misquoting a date. In any
17 event, the bottom line is this, that the Board Report is
18 not supportive of release. The psych eval is not
19 supportive of release. His parole plans need work. He
20 needs to take things seriously rather than sitting there
21 and perhaps indicating these are my intentions and I can
22 get out, I can find work somewhere, I can do this, I'm
23 not going to resort to crime. It's far too casual and
24 indicative of an individual that perhaps has changed in
25 terms of his intentions, no doubt has changed in terms

1 of his age, but otherwise has not taken those positive
2 steps that he needs to in order to get past what caused
3 him to be where he is today. And I think that his
4 conflicting versions of the offense suggest that he has
5 never truly looked at it with an eye to see just what
6 did I do, what was wrong with me to make me do this, and
7 where is it, is it still here, how have I dealt with it.
8 Again, he should be commended for at least the
9 intentions, but as it is said, the road to hell is paved
10 with good intentions, and I think that he needs to make
11 serious effort at correcting the underlying problems
12 that have gotten him to where he is today if he is ever
13 to be suitable for release. I think that it's going to
14 take him a long time to do that. 60 is old, but it's
15 not in today's world anywhere near as old as it used to
16 be. So he does need to get busy, though. And I submit
17 that he is not suitable for release at this time and
18 should be denied. Thank you.

19 **PRESIDING COMMISSIONER BRYSON:** Thank you. And
20 counsel, I'd like to invite you to make a closing
21 statement.

22 **ATTORNEY HALL:** Yes, thank you. Clearly one of
23 the main things that this panel will be examining is the
24 insight gained by my client and understanding the nature
25 of the crime for which he was convicted. And I think

1 the evidence clearly shows that. In addition to gaining
2 insight, one has to -- the panel does have to decide
3 whether or not this will be translated into a crime-free
4 life on the outside. And again, the answer has to be
5 yes based on Mr. Alvarado's performance, especially
6 since 1993, when he has been discipline free. Certainly
7 his age shows more maturity, naturally, but not just
8 getting older, but in fact some of the things that he
9 has done. And I want to just go back to look at Dr.
10 Starrett wrote with respect to the issue of insight.
11 Dr. Starrett says at page 11, "The inmate accepts
12 responsibility for the crime. He does have some insight
13 and does express remorse." So again, this is
14 confirmation that, in fact, Mr. Alvarado has really
15 dealt and examined the crimes for which he was
16 convicted. Also, the doctor continues that the inmate
17 would rate in the moderate range in terms of his risk
18 management for the future. Also that until 1993, the
19 inmate had some problems handling stress, compliance and
20 destabilizers in the institutional environment. So
21 speaking of what he was going through up until 1993,
22 there's no doubt that Mr. Alvarado had some issues that
23 he was addressing, that he needed to address, and that
24 he clearly has addressed from 1993, almost 14 years ago.
25 I don't think that's a minimal amount of time. 14 years

1 of a lifetime is a long time. So that should be taken
2 into account. There is no question that the crimes were
3 horrific, but as the Deputy District Attorney points
4 out, in the first offense, Mr. Romero came kicking my
5 client's door down. I think that when any individual
6 goes to someone's home and kicks down the door, the law
7 allows certain -- these are extenuating circumstances.
8 The law doesn't say you can kill the person, but you can
9 protect your home. It is true that Mr. Alvarado went
10 beyond protecting his home, and for that he paid a
11 price. But there's that provocation, and I think the
12 Board needs to take that into account. Similarly, while
13 his intoxication was not a justification for killing
14 Mr. Romo, the fact is that there were many issues.
15 These issues were discussed in the 2000 hearing. And as
16 well, Mr. Alvarado has discussed with the evaluator,
17 that there was a family problem. His sister-in-law was
18 constantly abused by Mr. Romo. The family was petrified
19 of this man, and he has been approached by other family
20 members to speak with Mr. Romo to try to curb his
21 behavior. It is true that Mr. Alvarado perhaps should
22 not have gone to see Mr. Alvarado (sic) on that night
23 when he was inebriated, but he did. Nonetheless, as he
24 discussed previously, he was attacked by Mr. Romo. It
25 is not by way of an excuse. It is not by way of

1 justification, but those are the facts. We have
2 statements about, especially the letter from the Chief
3 of Police of San Jose talking about Mr. Alvarado being a
4 dropout of the Nuestra Familia and the killing was to
5 get him off a hit list. I'm not privy to the transcript
6 of the trial, but nothing I read in the probation
7 officer's report sustains this kind of conclusion. So
8 again, that should be taken with a grain of salt by this
9 panel. And it is true that this is not a re-trial.
10 Thankfully it's not a re-trial. What the examination
11 should focus on is really whether or not Mr. Alvarado
12 has rehabilitated himself with the assistance of the
13 institution, and I think the answer to that really has
14 to be yes when you look back at his conduct over the
15 past 14 years. The facts of the crime will never change
16 and, in fact, the court of appeals -- California Court
17 of Appeals -- has cautioned us to look, to not put too
18 much weight on the circumstances that occurred more than
19 20 years in the past. In Mr. Alvarado's case, we're
20 talking about crimes that occurred in June of 1977 and
21 January of 1979, and it's well past 20 years. Now it is
22 true that even prior to that, there was an extensive
23 criminal history. But if you look clearly at those
24 offenses, you will see that most of them really involve
25 substances, whether alcohol or drugs. I counted about

1 three that involved any kind of aggression, whether it's
2 -- well, four if you include possession of weapons. And
3 then also, if you look at some of those incidents, there
4 are dismissals and things of that sort. So we can't
5 deny the fact that yes, at face value, just looking at
6 it, it looks bad. But when you look at the specific
7 events, there's not many that involve any violence
8 against any victim. So I think the panel should take
9 that into account as well. Yes, he was 31 at the time
10 of this crime. Clearly when you have a person who
11 commits a crime that lands him in the Youth Authority at
12 age 9, I think you really have to question the type of
13 influences he had. And to then say okay, when he's 31,
14 he should be a law-abiding citizen, it doesn't compute.
15 I think that without some serious intervention, that
16 9-year-old, whether he becomes 15 and then 30 without
17 strong intervention, would not really have been changed.
18 Without the education and the kind of exposure to
19 corrective influences, there is not going to be a
20 change. But what we're seeing is that since coming to
21 the CDC, he's been exposed to these corrective
22 influences, and we've seen a change. Yes, it took some
23 time after he arrived at CDC, but you can see the
24 changes. In 1993, there was a breaking point. So the
25 next 14 years you see someone who has grown, who has

1 come to appreciate the value of life, the value of
2 societal rules, and to the point where he can get the
3 kind of supportive evaluations by the psychologist who
4 evaluated him. He's participated in the various
5 self-help programs, including AA and NA. And I think
6 what Mr. Alvarado is trying to convey to this panel is
7 that he may not be able to recite the twelve steps, but
8 clearly they've been instrumental in helping to guide
9 him to remaining sober over all these years. And that
10 should also be taken into account. The fact is that he
11 has consistently worked while in the institution, again
12 demonstrating that he can be responsible and really take
13 care of himself. He's learned vocations that will be
14 marketable once he goes out on the outside. He has
15 taken refuge with his faith. He has attended services,
16 and he has also used that to guide him to stay
17 discipline free. He also has family support, both while
18 he's in custody right now, as well as to look forward to
19 when he goes out. So I think essentially what we have
20 seen is the maturation of a person who, although not
21 having the kind of judgment that society would have like
22 to see when he was 31 years old, now that he is 60, he
23 has clearly demonstrated that. He is demonstrating that
24 with the kind of support and corrective influences that
25 he has had within the institution and that he can expect

1 on the outside from his family that he will be able to
2 abide by the laws of society, someone that has the
3 skills to go out. He came into prison without any job
4 skills. He's going out with these skills, with the
5 ability to find gainful employment. And the fact that
6 he's more mature, more calm, more relaxed, is indicative
7 of someone who cannot easily be angered, because
8 certainly the crimes suggested some anger, someone who
9 will not be consuming any intoxicating substances. So
10 essentially we have someone who is ready to go out and
11 show the Board that, in fact, he can be relied upon to
12 be a law-abiding citizen, and he has the skills to
13 provide for himself. And we ask that you find him
14 suitable because of those things. Thank you.

15 **PRESIDING COMMISSIONER BRYSON:** Thank you. Sir,
16 are you suitable for parole?

17 **INMATE ALVARADO:** I believe I am, although I
18 also believe that it's not going to be easy, because
19 like the Commissioner mentioned earlier, there's a lot
20 of competition out there. There's a lot of hurdles.
21 But like I told my attorney yesterday, I'm going to
22 parole one day because I want to parole, and because I
23 want to make it out there, and I'm going to make it out
24 there. With that in mind and in person, I will make it
25 one way or another, and I will parole, Commissioner, one

1 day, because that's what I want, and I'm going to find
2 it.

3 PRESIDING COMMISSIONER BRYSON: Okay, sir.

4 INMATE ALVARADO: I'm going to make it happen.

5 PRESIDING COMMISSIONER BRYSON: Okay, sir, thank
6 you.

7 INMATE ALVARADO: Thank you.

8 PRESIDING COMMISSIONER BRYSON: We'll now recess
9 for deliberations. The time is 10:46.

10 R E C E S S

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CALIFORNIA BOARD OF PAROLE HEARINGS

D E C I S I O N

DEPUTY COMMISSIONER ENLOE: Okay, we're back on record.

PRESIDING COMMISSIONER BRYSON: Thank you. And we've reconvened in the matter of Antonio Alvarado for the decision. The time is now 11:28, and all parties have returned to the room, and additionally we have the District Attorney on video conference. Sir, the panel reviewed all information received from you and from the public and relied on the following circumstances in concluding that you are not yet suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison.

This offense was carried in an especially cruel and callous manner in that on June 23rd of 1977 at approximately 2345 hours, pursuant to an altercation between the victim Steven Romero, a 25-year-old male, and the inmate after Romero kicked entry into the inmate's residence at 984 Elm Street, Apartment 5 in San Jose. The inmate stabbed Romero with a butcher knife, then chased Romero, inflicting the fatal stab wound in the parking lot of an apartment complex, piercing Romero's chest and pulmonary artery. The

1 witness said that the inmate owed the victim two
2 hundred dollars for reds, for drugs. Multiple victims
3 were attacked or killed in separate instances. On
4 January 6th of 1979, the inmate had been drinking at
5 the residence of his wife, Christina Lopez and her
6 family, including her sister, Alice Cortez, who had
7 left Billy Romo for domestic violence reasons. Under
8 the influence, the inmate threatened to kill Romo, as
9 he frequently did under the influence of alcohol and
10 drugs. This offense was carried out in a dispassionate
11 and calculated matter in that 2100 hours that evening,
12 the inmate brandished a loaded 22-caliber pistol he
13 claimed was a disposed-of Nuestra Familia weapon.
14 Later, Cortez family members found Romo lying on the
15 floor of his residence at 767 East Julien Street in San
16 Jose, with eight gunshot wounds. Romo's blood tested
17 positive for PCP, and police officers found a
18 hypodermic syringe needle and heroine. The inmate was
19 apprehended at 0030 hours on January 7th of 1979 after
20 running a red light in San Jose. The inmate's blood
21 alcohol tested at .23 percent, and morphine was
22 detected in his system. Sir, you have a massive
23 history of violations, including three commitments to
24 California Youth Authority beginning at a very early

1 age. You have weapons offenses, assaults, prior
2 criminality, including burglaries, property offenses,
3 drugs, destruction of property, crimes against police
4 officers, an escalating pattern of criminal conduct and
5 violence that includes having failed society's prior
6 attempts to correct your criminality. You had juvenile
7 parole, adult probation, juvenile probation. You had
8 county jail time. You had possession of narcotics
9 charges, property crimes, driving under the influence,
10 under the influence crimes and assault crimes. Sir,
11 your institutional behavior has included some
12 commendable programming most recently, and also limited
13 programming or insufficient programming early in your
14 career in the California Department of Corrections and
15 Rehabilitation. Currently you're doing good work with
16 satisfactory to above average work reports in PIA wood
17 products as a machine operator. And we have the most
18 recent reportage there of 2006 and 2007. You've also
19 in that line worked as a furniture finisher. You've
20 also worked previously as a dish washer and line
21 server. You've had good work reports in those tasks.
22 You did achieve your GED through CDC in 1982. You also
23 achieved completion of silk screening in 2000, and you
24 have several certifications as a machine shop operator
25 **ANTONIO ALVARADO C-09142 DECISION PAGE 3 5/31/07**

1 most recently. Read into the record were laudatory
2 chronos from 2005 through 2007. You have also
3 participated in some self-help programming, including
4 the inmate employability program and two or more anger
5 management programs. You also are to be commended for
6 your work as a volunteer and obtaining donations on a
7 voluntary basis, and you have laudatory chronos to that
8 effect. You also are a practicing Catholic. Also, you
9 have participated for a number of years in AA or NA.
10 However, under questioning, you show that you have not
11 yet internalized the steps that are provided in these
12 programs that are intended to give you ready tools for
13 operating on the outside successfully. As to your
14 misconduct in prison, you do have a significant history
15 of -- certainly of alcohol in prison, with 20 115s.
16 The good news, however, is that you had a positive
17 change in 1993, and have been discipline free since
18 that time. You do have a history of nine 128As, and a
19 rather disturbing recency in those 128As, the most
20 recent being in 2005 for refusal to report to work, and
21 prior to that, in 2003, disobeying a direct order. But
22 you have to your credit, sir, shown a positive change
23 that seems to be holding, and you are programming
24 successfully, although as to self-help on a limited
25 ANTONIO ALVARADO C-09142 DECISION PAGE 4 5/31/07

1 basis. As to the psychological report dated December
2 28th, 2006 by Dr. Richard Starrett, S-T-A-R-R-E-T-T,
3 basically Dr. Starrett's report does not support your
4 parole. It is not supportive of your release. And in
5 addition to the quotations that were made by
6 Commissioner Enloe into the record, we would like to
7 add these, which we feel are dispositive in your case.

8 As to Dr. Starrett's clinical report, under
9 history of violence, and I quote him on page 10, middle
10 page, under history of violence: "In rating this
11 individual on historical factors, he would rate in the
12 high range in terms of his likelihood to commit future
13 violent acts when compared to other inmates with
14 similar crimes. This rating is based on his age when
15 he first acted out --" And I'll step out of this
16 direct quote to put on record once again that your age
17 at the crimes that are involved in the commitment
18 offense was 32 years old. And back to quoting
19 Dr. Starrett: "-- and when compared to other inmates
20 with similar crimes. The rating is based on his age
21 when he first acted out violence or was in a
22 potentially violent situation, his prior criminal
23 record, being involved in unstable relationships,
24 unstable employment, being a substance abuser, having

1 early maladjustment problems and prior failures on
2 supervision." And then also on page 10 of the same
3 clinician's report, under substance abuse: "Relapsing
4 in the use of alcohol and drugs is a concern. This has
5 been a problem for the individual on the street and
6 while incarcerated. Although he has been clean and
7 sober for a number of years now, has not been
8 continuously involved in AA or NA, which he needs to
9 be." The clinician also observed that he does -- and
10 the clinician writes, "He does some insight" -- the
11 inference is that he means he does have some insight --
12 "and does express remorse." And, sir, you have
13 expressed regret. This panel is not sure that regret
14 and remorse are actually the same things. That's a
15 question we feel you must look at in the coming time
16 that you have to serve because we feel that goes to
17 insight, and I'll talk about that in a moment.

18 As to your parole plans, your sister and your
19 fiancé have offered residence and financial support,
20 and you have no job plans that are substantial. So
21 those need to be enforced, or reinforced, rather, and
22 planned. You do, however, have machine shop skills,
23 and your sister has also eluded to in her letter a
24 reentry program. But you do need to look into a

1 reentry program to actually address continuing
2 monitoring for your substantial history of adult -- or,
3 excuse me -- of alcohol and drug addiction. As to
4 Penal Code 3042 responses, responses indicate
5 opposition to a finding of parole suitability,
6 specifically by the District Attorney of Santa Clara
7 County, and also San Jose Police Department.

8 In a separate decision, the hearing panel finds
9 it is not reasonable to expect that parole would be
10 granted at a hearing during the following four years.
11 Specific reasons for this finding are as follows. This
12 offense was cruel and callous, and actually, it's this
13 set of offenses. On June 2000 -- or, excuse me -- 1977
14 at 2345 hours, after an argument between the victim,
15 Steven Romero, who was 25 years of age at the time, and
16 you. After Romero kicked entry into your residence at
17 984 Elm Street, Apartment 5 in San Jose, you stabbed
18 Mr. Romero with a butcher knife, chasing him outside.
19 You then proceeded to continue to chase him, and you
20 inflicted a fatal stab wound in the parking lot of the
21 apartment complex, piercing his chest and pulmonary
22 artery. And, sir, as your attorney stated, as was your
23 right, you did not address the crime today, although we
24 did have many questions we could not ask because of

1 this. But your attorney indicated that, in fact, the
2 transcript of March 28, 2000, which was your last full
3 hearing for which you were present, indicated your
4 actual view on your crime and your version of your
5 crime. So we did reference that transcript.

6 And in terms of the June 23rd, 1977 crime, we
7 researched it, and you were talking about the -- about
8 performing the crime in reference to questioning by
9 reciting Commissioner Munoz. And he asked him, or he
10 asked you, "So, the first time you stabbed him, you
11 were in the house?" And you answered "Yes." Then he
12 said, "Is that right? Did you stab him outside the
13 house too?" And you said, "Yes, I did." And he said,
14 "How many times in total did you stab him?" And you
15 said, "Well, outside of the house I was just poking at
16 him to keep him away, not like a stab like inside the
17 house. No, I just kept like poking him so he would
18 stay away from me, just to get him away from there."
19 And presiding Commissioner Munoz said, "Okay, when you
20 say poking him, do you mean just flinging at him, or do
21 you mean breaking --" (pause) And then you said,
22 "Well, what I --" And then he says, "-- his skin?"
23 And then you said, "Apparently, yes, but poking him not
24 so much like a stab like I guess a violent stab, just
25 ANTONIO ALVARADO C-09142 DECISION PAGE 8 5/31/07

1 to keep him away. But I guess it is a stab, yes." And
2 the Presiding Commissioner said "Okay, so how many
3 times in total do you think you stabbed him?" And you
4 said, "I don't know." So I'd like to point out again
5 that that was the fatal stab. You pierced his chest
6 and his pulmonary artery. That, sir, just flies in the
7 face of frankly a poke.

8 And then as to the commitment offense, on
9 January 6th of 1979, you had been drinking at the
10 residence of Christina Lopez with her family and her
11 sister, Alice Cortez, who had left Billy Romo for
12 domestic violence. And under the influence, you
13 threatened to kill Romo, and apparently you frequently
14 did that when under the influence of alcohol and drugs.
15 It's questionable that anyone took you seriously. But
16 this offense was carried out dispassionately and in a
17 calculated manner in that at 2100 hours that evening,
18 you brandished a loaded 22-caliber pistol you claimed
19 was a disposed-of Nuestra Familia weapon. And later,
20 of course, the family members found Romo lying on the
21 floor of his residence at 766 East Julien Street in San
22 Jose, with eight gunshot wounds in him. His blood did
23 test positive for PCP, and the police officers did find
24 a hypodermic syringe needle with possibly heroine. You

1 were apprehended then at 0030 hours on January 7th of
2 1979 after running a red light in San Jose where your
3 BAC, your blood alcohol content, tested at 23 percent,
4 .23 percent alcohol, and you had morphine in your
5 system that tested also. But again, referring to the
6 same transcript, Commissioner Munoz was asking you
7 about that crime, and you said: "So I told him that I
8 would kind of talk to him, like ease off on Alice,
9 which his wife, common wife, Alice Cortez. Apparently
10 I guess they were, you know -- he was, I guess, hitting
11 her, and I was just going to tell him just to lighten
12 up because the family was -- it was getting out of
13 control. They weren't going to let him in the house.
14 They wouldn't want him around the house any more. And
15 when I got there, I did have a .22 on me. And when I
16 got there, I was sitting down talking with him. And
17 when I brought up the conversation about him and Alice,
18 he got upset with me because I guess he thought that I
19 was trying to get into his business or his married
20 life, or whatever. And I told him, 'No, it's not like
21 that. I'm just letting you know how the family feels.'
22 And he got up, and he had a knife, and he came at me,
23 and I pulled out the .22 and I shot him. He came at
24 me, and he was much bigger than I was in his stature,

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25 ANTONIO ALVARADO C-09142 DECISION PAGE 8 5/31/07

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22 Jose, with eight gunshot wounds in him. His blood did
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25 **ANTONIO ALVARADO C-09142 DECISION PAGE 9 5/31/07**

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19 was trying to get into his business or his married
20 life, or whatever. And I told him, 'No, it's not like
21 that. I'm just letting you know how the family feels.'
22 And he got up, and he had a knife, and he came at me,
23 and I pulled out the .22 and I shot him. He came at
24 me, and he was much bigger than I was in his stature,

1 and we struggled with each other, and I just kept
2 shooting the gun. I just kept firing it until I guess
3 the bullets were out of there. He just stood right
4 there. He fell down and I took off." And then
5 Commissioner Munoz asks you, "Okay, where did this
6 confrontation take place?" And you say, "At his house.
7 I went to his house to speak to him." "Did you know he
8 was dead when you shot him?" "No." "It says here you
9 shot --" "I didn't know he was dead." "You didn't
10 know he was dead?" "Not dead when I left." "Okay, did
11 you call an ambulance?" "No, I just left." "Did you
12 call the police?" "No." But, sir, if this were a
13 self-defense maneuver, it's hard to understand why you
14 just left him, especially someone who you knew. So
15 basically, you abandoned him to die if he was not
16 already dead.

17 And then Commissioner Munoz, on page 30, further
18 questions you and asks about the gun. And he says,
19 "Mr. Alvarado, I started to ask you about the gun and
20 where it came from. You said it came from somewhere --
21 somebody in Bakersfield gave it to you." And you say,
22 "You know what? As far as my recollection, I think
23 that's where it came from. You know, it's been quite a
24 while." And then Mr. Munoz says, "Well, go ahead." And
25 ANTONIO ALVARADO C-09142 DECISION PAGE 11 5/31/07

1 then you say, "But yeah, I think I did get it from over
2 there." Then Commissioner Munoz says, "This Board
3 Report, there's a statement that you were given the gun
4 by a member of the Nuestra Familia." And then you said,
5 "Yes, I read that somewhere." And then he says, "All
6 right, did that happen?" And then you said, "No." And
7 then he says, "But you're not sure how you got the gun?"
8 And then you said, "I know how I got the gun." And then
9 Commissioner Munoz says, "Who gave you the gun?" And
10 then you say, "I don't know his name. I can't recall
11 his name. It was someone in Bakersfield. I was
12 visiting in Bakersfield. My mother and brothers live in
13 Bakersfield, Kern County. I was down there visiting."

14 Sir, you have consistently been a very poor
15 historian. This is your history, sir. These events
16 would be expected to stand out in your mind, or at least
17 your representation of the surrounding material. And
18 that's what we were given to rely upon, is your version,
19 which shows precious little insight to no insight at all
20 into your crime. I questioned you at some length as to

21 your criminal history. This offense, sir, was carried
22 out in a manner demonstrating exceptionally callous
23 disregard for human suffering. Public safety was at
24 risk in both of these crimes. You had clear

1 opportunities to cease, but you continued. And, in
2 fact, the motive for these crimes is very trivial in
3 relation to the offense as it appears to this panel.
4 And you were under the influence, but that certainly,
5 sir, is not a motive nor an explanation. Your
6 credibility is at stake here, sir. You have minimized
7 your entire criminal history to this panel today when I
8 tried diligently to question you about your criminality
9 from the time you were nine years old until you
10 committed this crime at age 32. There are big gaps
11 there that you that you just flat refuse to discuss by
12 circumventing very skillfully, and basically
13 manipulating the conversation so that you did not have
14 to answer, and which that's certainly your right, sir,
15 but it does leave large question marks with this panel.
16 Sir, do you know what the word parole means? Do you
17 know what that word actually means?

18 **INMATE ALVARADO:** Yes.

19 **PRESIDING COMMISSIONER BRYSON:** What does it
20 mean, sir?

21 **INMATE ALVARADO:** It means someone being
22 released from incarceration, being placed on parole for
23 supervision. There are written conditions they have to
24 follow.

25 **ANTONIO ALVARADO** C-09142 DECISION PAGE 13 5/31/07

1 PRESIDING COMMISSIONER BRYSON: All right, sir,
2 and in the CDCR system, that is what parole means. But
3 the word itself, in English, is actually derived from
4 the French word parole, and that French word means word
5 of honor. And, sir, when anyone leaves this prison,
6 that's all we have, is your word of honor. We have
7 nothing else. We have not guarantees that you'll obey
8 the law. We are left with your word of honor. And so,
9 sir, your word has to be gold. Your word has to be
10 good. The panel has to believe that you are as good as
11 your word. And this panel today doesn't believe that
12 you've achieved that because you have minimized your
13 criminal history. You've left gaps. You're very
14 skillful linguistically, sir, in manipulating a
15 conversation, but, in fact, that leaves many holes.
16 That does not leave us with the feeling that you are
17 serious about becoming suitable. In fact, today you
18 said at the very end, "I'll parole because I want to."
19 That's not true, sir. That's not necessarily true. You
20 could spend the rest of your life here with that
21 attitude, because it has been a laid-back attitude. You
22 have to actively demonstrate suitability and a realistic
23 viewpoint of your readiness to a panel, not simply say
24 well, I will because I want to, because there are things
25 ANTONIO ALVARADO C-09142 DECISION PAGE 14 5/31/07

1 you must do, sir. You must internalize the twelve steps
2 or some version, or internalize what it is you plan to
3 do, not just say I won't drink because I won't. It's
4 important. Or I won't use drugs because I won't. We've
5 been there with you, sir, before, in the past. You've
6 been arrested, and jailed, and put into CYA many times.
7 And so you have a higher bar that you have to meet. We
8 also feel that it's important you do correct the
9 underlying issues in terms of getting insight into them.
10 You are expected to have insight into why you committed
11 the offense because it's the only way we can understand
12 that you understand the nature and magnitude of the
13 commitment offense. Otherwise, you remain unpredictable
14 and a threat to public safety. And that's where we are,
15 sir, today. We don't feel that we have progressed in
16 our confidence of you. And so in assessing you for four
17 years, we're placing you on the 2011 calendar for your
18 next Subsequent Hearing. This Board recommends no more
19 115s or 128As, that you get self-help and, sir, that you
20 embrace self-help. That's important, both AA, NA, and
21 all the self-help programming you can get. And you have
22 a lot of work to do in that regard. We put in that you
23 advance your trade. As you know, skills are perishable.

24 It appears that you're doing very well, so we encourage
25 **ANTONIO ALVARADO C-09142 DECISION PAGE 15 5/31/07**

1 you to continue with that. Advance in your trade.
2 Also, we encourage you to advance your education. You
3 started college once a long time ago, and it's possible
4 for you to at least advance in terms of some courses,
5 and possibly some courses that would help you get some
6 more understanding into your criminality. And we also
7 are requesting a new psychological evaluation because
8 primarily this will be a four-year interim -- actually a
9 five-year interval before your next Board hearing. So I
10 wish you good luck, sir. And I'd like to turn it over
11 to Commissioner Enloe for your remarks.

12 DEPUTY COMMISSIONER ENLOE: Yes. Mr. Alvarado,
13 I just -- I have one additional suggestion. When you do
14 receive the transcript from this hearing, I would hope
15 that you would, you know, keep that, carefully go
16 through it and, you know, look very carefully about
17 things that have been discussed today. I think that
18 will be a very good basis for you. If you're truly
19 serious about wanting to parole, I think it will give
20 you some good, valuable suggestions to follow and
21 *hopefully be sort of a road map for you. And I
22 certainly do wish you the best of luck, sir.

23 ///

24 ///

25 ANTONIO ALVARADO C-09142 DECISION PAGE 16 5/31/07

1 PRESIDING COMMISSIONER BRYSON: Good luck, sir.

2 INMATE ALVARADO: Thank you.

3 PRESIDING COMMISSIONER BRYSON: That concludes
4 this hearing. The time is now 11:50.

5 A D J O U R N M E N T

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21 * PAROLE DENIED FOUR YEARS.

22 THIS DECISION WILL BE FINAL ON: SEP 28 2007

23 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT

24 DATE, THE DECISION IS MODIFIED.

25 ANTONIO ALVARADO C-09142 DECISION PAGE 17 5/31/07

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, ELIZABETH A. SCOTT, a duly designated transcriber, NORTHERN CALIFORNIA COURT REPORTERS, do hereby declare and certify under penalty of perjury that I have transcribed one audio recording which covers a total of pages numbered 1 - 85, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING OF ANTONIO ALVARADO, CDC number C-09142, on MAY 31, 2007, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned audio recording to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated JULY 22, 2007 at Sacramento County,
California.

Elizabeth A. Scott
Elizabeth A. Scott Transcriber

Northern California Court Reporters

EXHIBIT “B”

HARLEY COPY

**Life-Term Inmate Evaluation for the Board of Parole Hearings
MENTAL HEALTH EVALUATION**

CORRECTIONAL TRAINING FACILITY, SOLEDAD STATE PRISON

PSYCHOSOCIAL ASSESSMENT

I. IDENTIFYING INFORMATION

NAME:	Alvarado, Antonio
CDC #:	C-09142
AGE:	59 years
DOB:	12/31/46
MARITAL STATUS:	Single
RACE:	Hispanic
SEX:	Male
RELIGION:	Catholic
DATE OF REPORT:	12/28/06

This report is based on review of the inmate's medical file, review of his C-File, prior Board of Parole Hearings Evaluations, prior psychological evaluations, current classification information and probation officer's report. The current interview with the inmate and the report are limited by the amount of information given to this examiner by the inmate at the time of the interview. The following information is accurate to the extent that the records and the inmate's self-report are accurate. As a result, the absolute accuracy cannot be assured. The primary purpose of this report is to provide the Board of Parole Hearings psychological data, psychiatric diagnostic information and an assessment of dangerousness in regard to his possible release to the community. This evaluator is not responsible for any inaccurate statements or changed opinions expressed by the inmate at a later date. The inmate was interviewed for approximately 60 minutes, the initial medical file and C-File were reviewed for the interview for 1 hour, the inmate's C-File file was reviewed for approximately 4 to 6 hours and dictating, report writing and editing took 4 hours.

The inmate was informed that the interview was not confidential and a report with the results of the evaluation would be submitted to the Board of Parole Hearings to assist in determining his eligibility for parole. The inmate was informed that any disagreement with the substantive conclusion could be most appropriately address at the inmate's Board hearing. The inmate appeared to understand the nature of the evaluation and the possible consequences of the interview to the best of the inmate's ability. For reasons not limited to the possibility that an individual may have a mental disability or condition which may qualify under the American's with Disabilities Act, the evaluation was conducted by a licensed clinical psychologist.

This information is based on the inmate's statements during the time of the interview. The inmate's crime occurred on January 6, 1979. He was received into California Department of Corrections on October 20, 1979. He was 32 years old at the time of the crime. The inmate was convicted of PC §187 Murder in the First Degree with an enhancement of PC §12022. He received a 27 years to life sentence. His minimum eligible parole date was February 4, 2000. He has served 28 years. His initial Board was in 1999 and this is his third subsequent.

This information is based on the inmate's statements during the time of the interview. The inmate has received a total of twenty CDC 115's. The last one was in 1993. He has had one for violent related, a number of alcohol and drug related.

The inmate upgraded himself educationally. He received his Graduate Equivalency Diploma and has 13 college units. The inmate has completed silk screen and graphic arts. He is currently in woodshop and working on a lamination certificate. The inmate plans to work in textiles, wood or as a laborer when he is released. The inmate is currently on the list for AA or NA. He has about 18 months active in AA. He says he is active in his religion. The inmate completed about three groups years ago in Corcoran.

II. DEVELOPMENTAL HISTORY:

This information is based on the inmate's statements during the time of the interview. The inmate was born in Planview, Texas. He was about 2 or 2 1/2 years old when the family relocated to Bakersfield. He denies any prenatal or birth complications or birth defects growing up. He states that his development in terms of speech, language and motor skills were within normal limits. He denies any emotional or health problems in childhood. He denies any traumas or abuse in childhood. There were disruptions in childhood in that he was in Youth Authority at 10 years of age.

III. EDUCATION:

The inmate dropped out of school in the eleventh grade. He was in ESL classes initially. He denies any learning problems, grade failures, or ever being in special education classes. He denies any behavioral problems in school. He was never suspended or expelled, never got into fights.

The inmate's grade point level is approximately 11.5. He has had educational upgrades.

IV. FAMILY HISTORY:

The inmate's Family History is the same as the prior Board of Parole Hearings psychological evaluations.

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

The inmate's Psychosexual Development is the same as the prior Board of Parole Hearings psychological evaluations.

VI. MARITAL HISTORY:

The inmate's Marital History is the same as the prior Board of Parole Hearings psychological evaluations.

VII. MILITARY HISTORY:

The inmate has no military history.

VIII. EMPLOYMENT/INCOME HISTORY:

The inmate's Employment/Income History is the same as the prior Board of Parole Hearings psychological evaluations.

IX. SUBSTANCE ABUSE HISTORY:

The inmate's Substance Abuse History is the same as the prior Board of Parole Hearings psychological evaluations.

X. PSYCHIATRIC AND MEDICAL HISTORY:

Medical:

The inmate denies any allergies, asthma, cardiac, respiratory, vision, hearing or orthopedic problems. He has had a hernia surgery. He has no head injuries. He denies any seizures, thyroid, diabetes or venereal diseases. He sees his current health as above average.

Mental Health:

The inmate denies ever being treated for mental health problems in the community or while incarcerated. He denies any mental health hospitalizations or ever being on psychotropic medications.

XI. PLANS IF GRANTED RELEASE:

The inmate plans to parole to San Jose and live with his fiancée. He does not have a job offer there but feels that he will have no trouble finding work in textiles.

CLINICAL ASSESSMENT**XII. CURRENT MENTAL STATUS/TREATMENT NEEDS:**

The inmate was oriented by person, place and time. He was alert and cooperative. His simple registration was intact, but there was a slight impairment in terms of his short-term memory. He could only remember two of three words across time. His mathematical ability was intact. His simple abstract thinking was intact. His complex problem solving abilities were very concrete and impaired.

At the current time, he denies any problems with depression, anxiety, mood swings or mood disorder. He denies any auditory or visual hallucinations. He denies any delusional or paranoid thinking. He denies any eating or sleeping problems. He denies any mental health problems as a child. He denies any suicidal or homicidal thinking.

DIAGNOSTIC IMPRESSIONS DSM-IV:

- AXIS I** 304.8 Polysubstance Dependent, in institutional remission but not in treatment.
- AXIS II** 301.7 Antisocial Personality Disorder, in remission since his last CDC 115 in 1993.
- AXIS III** Deferred.
- AXIS IV** Psychosocial Stressors: Incarceration.
- AXIS V** Global Assessment of Functioning (GAF): 70.

The inmate is currently in the General Population and has never been a member of the MHSDS system while incarcerated. He currently is not active in self-help or in NA or AA.

XIII. REVIEW OF LIFE CRIME:

The inmate was convicted of PC §187 Murder in the First Degree with an enhancement of PC §12022. He received a 27 years to life sentence. His minimum eligible parole date was February 4, 2000. He has served 28 years.

Summary of the Crime: On 01/06/79 Alvarado had been drinking at the residence of his common-law-wife, Christina Lopez, with members of her family include her two brothers and her sister, Alice Cortez, the former common-law-wife of the victim Billy Romo. Alice Cortez was residing in Alvarado's home after leaving Romo as a consequence of a fight, where Romo had physically hit her. As Alvarado became increasingly inebriated, he threatened to kill Romo out loud. These threats were not taken seriously by the members of the Cortez family; however, since Alvarado reportedly frequently made such threats while under the influence of alcohol and drugs. At approximately seven o'clock in the evening, Alvarado began to brandish a loaded .22 caliber pistol, which he indicated previously was used in a killing by the "Nuestra Familia" and was given to him for disposal.

Members of the Cortez family went to Romo's residence at 767 East Julian Street in San Jose, California, where they found the victim lying on the floor in the living room with multiple gunshot wounds. The police and ambulance were called to the scene of the crime. Romo was found to be dead from what was later reported. It should be noted that later analysis of Romo's blood was found to be positive for the presence of phencyclidine. A search of the residence uncovered a hypodermic syringe, needle possibly containing heroin, two .22 caliber rifles and ammunition.

Alvarado was apprehended at approximately 12:30 a.m. on 01/07/79 after running a red light in a vehicle in the downtown San Jose area. Alvarado was initially released with the instruction to walk home but was subsequently detained after a radio broadcast listing him as the suspect in the above offense. Alvarado offered no resistance at the time of his arrest. A blood sample revealed .23% level of alcohol as well as the presence of morphine in his system.

The above information was obtained from the Santa Clara County Probation Officer's Report (POR) dated 09/13/79. Pages 3 and 4.

Inmate's Version: The prisoner presented the following statement in writing:

"On 06/23/77 late in the evening a loud bang and kicking was being done on my apartment door. I looked out my window and saw 2 men at my door. At first I didn't recognize who it was. One of the men left and one continued to bang and kick my door making threatening comments. I, my wife and newborn Son were in the apartment in bed to fall asleep. I told my wife Christina Cortez to stay in the bedroom with our Son. I repeatedly ask the victim (Mr. Romero) to go away but he didn't and continued to kick down the door. I had no firearms in the house so I went to the kitchen and grab a kitchen knife. By that time Mr. Romero had kick the door open so as soon as he broke in I stab him in the stomach area. Mr. Romero was much larger in size than me so he continued to attack me. I followed him outside because I still fear he may somehow get a firearm and come back and kill me and my family. The other person(s) got scared and hide out of sight cause I didn't see them anymore. I cannot say I did the right thing because the loss of a human life

can never be right and I strongly believe one human has not the right to take another ones life. My heart now will always remain somewhat sad for the pain. and lost of someone's Son. Father. Husband, etc, Months later I seen his wife and [expressed how much I wished it didn't have to happen that way."

"On 06/23/77 what lead to the incident of PC192.1 and PC12022(B)... To the best of my recollection I can clearly recall how it all took place that my door was being kicked down .. about 4 or 5 days prior to 06/23/77 I was driving my car and my brakes went. out so I stopped and seen that I was near Mr. Romero's house .. reason I knew was because at the apartments where I resided. a person there knew Mr. Romero and had taken me there one time, he went to smoke Pot and since I was there too I too smoke some as well.. when my brakes went out I knock on Mr. Romero's door and ask if I could push my car into his carport temporarily while I could tow my car or have it fixed.. his wife said yes ..I came back a few hours later and at one point: ask if I could use their telephone .. I was invited with hospitality and used the phone and left .. However my so call neighbor was already there .. I called picked up my car and left .. well at that time I didn't know but: it turned out that the other person who was there had took some drugs (PCP) belonging to Mr. Romero ... well the next day I went: to Bakersfield .. my family lives there it was not unusual for me to go to Bakersfield especially on Summer Season... while at: Bakersfield my wife Christina Cortez called and explain to me how Mr. Romero had went to our apartment and made some threatening comments to her, my child, and me that if I didn't pay him or return the drugs (PCP) about a gram amount.. I told my wife I would get on the first bus back to San Jose.. I was worried and well concern for our safety.. I didn't. arm myself because I wanted the opportunity to talk to him and let him know it wasn't me who took his PCP and not to be coming to my house in such hostile manner displaying antagonism.. unfortunately I never had that opportunity and that's when the breaking of my door begin."

"On 01/06/79 I went to Mr. Romo's house to talk to him... Mr. Romo was husband to my wife's sister.. I had stop by to talk to him about his behavior toward the in-laws.. it appeared that Mr. Romo was having differences with his wife and would go where ever she was to confront his anger toward her... being his in-laws were my in-laws too I said I would talk to him and ask him to tone it down or he might end up back: in prison .. I meant to talk to him in good fate after all we did get along well.. no one else could talk to him everyone was scared of his temper ... So on 01/06/79 I went to talk to him, I was sitting down and so was he and I started to tell him how he had the whole family scared and that it wasn't. a good thing and try to tone it down ... well he got mad and got up to walk toward me and I noticed he had a knife in his hand as he started to approach me so I got to my feet right away and pulled out a .22 pistol I had and told him to back off but he continued to come at me so I shot once and he still continued to come closer so I grab his arm the one with the knife and he grab my arm the one with the .22 pistol and we both were trying to take away each others weapon but as we struggled I continued to fire my pistol to try to stop him .. finally he got weaker as I continue to hit him .. he fell and that's when I left ... I've wished so many times it wouldn't have turn out that way .. I didn't want none of these two deaths to occur. I have no right to take away any human life.. I have

been locked away from my freedom for 25 years and my sorrow will never go away because their love ones will always feel the sadness. pain and the lost of their love one. I cannot say that I've done or paid for such crime with any amount of time because there's not enough time in ones life time to pay for such crimes .. I will say sadness in my heart will always be there because of my actions and that I've mature since and will never place myself in situations where person's life will be taken by me."

"On 01/06/79 what lead to the incident of PCI87 Murder and PC 12022.5 Use of Firearm. On 01/06/79 being a Saturday my wife was working at the San Jose Airport from 2 p.m. to 10 p.m. I wasn't employed and basically baby sat our son .. I spent a lot of time at my in-laws and was close to my Father in-law which I would sit drink wine and shoot the breeze with him .. He was a hard working man and very old fashion .. I had been drinking and got away from him earlier then usual because zipping on wine was beginning to take it's toll.. I hated the drunk feeling I would have prefer to smoke Pot better as a choice of high .. anyway I ended up with his son my Brother in-law...Richard Cortez and we were drinking a beer as he begin to talk about Billy Romo (victim) how Billy would beat his sister up and go to the house and terrorize the family by displaying his anger .. I ask Richard if he wanted to go talk to Billy that I would go with him and help him if Billy got violent .. Richard kept talking aggressively and so it got to the point where he said he felt like killing him and I said to him well if your going to do it then you better make sure you do because Billy will come back and take you out .. finally I told him lets just go talk to him before someone really gets hurt cause it looks to me it's out of control...Richard after talking aggressively said no I'll just go home I said alright but told him I didn't want to hear him complaining to me anymore about Billy .. so a little while later I decided to go talk to Billy because I thought if anyone could talk to him was me and I did like my in-laws and it also was a part or my family surroundings .. that's how I ended at Billy's house on 01/06/79."

Personal Comment: "The fact remains a life has been taken arid I'll take full responsibility for my actions .. for it is our choice to make how we live our lives in order to avoid ourselves of unfortunate circumstances .. "The matter of how a life is lost is never good."

Aggravating Factors: Alvarado was armed with a .22 caliber pistol and used the weapon in the commission of the crime. Murder was senseless and calculated. Alvarado has a history of criminal behavior. Alvarado's nature of the crime exhibited viciousness and cruelty.

Mitigating Factors: None.

Multiple Crimes:

Voluntary Manslaughter With Use of Deadly Weapon, 3 years. PC 192.1 and PC 12022(b). consecutive 1 year Enhancement. Ct.: 1, Santa Clara County Case Number 67828. Viedm: Billy Ramo, was (30) thirty years of age at. the time of the instant offense. Date received CDC is 10/04/79. Term: 3 years plus I year Enhancement.

Summary of the Crime: On 06/23/77 at approximately 11:45 p.m., an altercation between Steven Romero and the defendant developed at the apartment; of the defendant's residence at 984 Elm Street, Apt. #5, San Jose, California. Romero gained entry into the Alvarado residence by kicking in the front door, at which time Alvarado confronted him. Alvarado obtained a butcher knife from the kitchen prior to Romero's entry into the apartment. The two men (Romero and Alvarado), while fighting, fell onto the floor in the living room of the apartment. At this time, Alvarado began stabbing at Romero who was unarmed. Romero was able to break free from Alvarado's grasp and ran out of the apartment to the parking lot of the apartment complex. Alvarado followed him out of the apartment to the parking lot and stabbed him again. It was at this point that the fatal wound (a stab to the chest area, which pierced the pulmonary artery) was inflicted.

The above information was obtained from the Santo Clara County Probation Officer's Report (POR.) dated 04/13/79, page 3.

Inmate's Version: See the above-attached Prisoner's Version.

Aggravating Factors: Alvarado armed himself with a butcher knife from the kitchen in his apartment, which was used in the commission of the crime. The crime involved violence and potential for great bodily injury. Alvarado had the opportunity to cease but continued with the crime.

Mitigating Factors: None Noted.

Juvenile Arrest History: 1956, Age 9, Burglary, Sentenced to CYA; 1961, Age 14, Burglary, Sentenced to CYA; 1964, Age 17, Destruction Property, Malicious Mischief, Sentenced to CYA

The above information was obtained from the State of California Department of Justice Bureau of Identification, page 2.

Adult Arrest History: 1965, Bakersfield, Drunk, \$25 or 5 days; 1965, Bakersfield, Drunk W/out License, 2 days jail & \$10; 1965, Bakersfield, 5 Traffic Commitments 6 days jail; 1966, Bakersfield, Destruction of Property, \$29 fine; 1966, Bakersfield, Drunk/Resist Arrest, \$110 or 20 days, 3 years probation; 1966, Bakersfield, Drunk Drive/Open Container, 90 days & 30 days concurrent; 1967, Bakersfield, Poss Narcotics/Juvenile Pass Alcohol, 30 days suspended 1 year; 1967, Bakersfield, Drunk, Dismissed; 1967, Bakersfield, Driving w/Suspended License, Dismissed; 1967, Bakersfield, Theft, Dismissed; 1967, Bakersfield, Burglary, Dismissed; 1968, Bakersfield, Drunk, Dismissed; 1968, Bakersfield, Theft, 30 days; 1968, Bakersfield, Sniffing Glue, 90 days suspended 2 years; 1969, Bakersfield, Drunk, \$25 or 4 days; 1969, Bakersfield, Battery (warrant), 60 days suspended; 1969, Bakersfield, Poss Marijuana/Dangerous Drug, 3 years probation; 1969, Bakersfield, Inhale Poison Fumes, FT A/B/B.W.; 1969, Bakersfield, Drunk/Exhibit F/A, 30 days; 1970, Bakersfield, Drunk, 6 months jail; 1970, Bakersfield, Drunk, 90 days suspended 1 year; 1970, Bakersfield, Resist Arrest/Drunk Drive/Hit & Run/Drive

Suspended License, 1 year jail; 1970, Bakersfield, Drunk, No disposition; 1970, Bakersfield, Trespass/Inhale Fumes, 1 year probation/9 days jail; 1971, Bakersfield, Drunk, 180 days/suspended 1 year.

1971, Bakersfield, Drunk, 1 year probation; 1971, Bakersfield, Jaywalk/No License, 10 days jail; 1971, Bakersfield, Drive Revoked License/Hit & Run Drunk/Assault/Battery, Dismissed; 1971, Delano, Drunk/Assault/Battery, 180 days suspended 2 years 90 days; 1972, San Jose, Assault/Battery, Detain/Release; 1972, Bakersfield, Exhibited Deadly Weapon, 6 months/1 day suspended; 1973, San Jose, Drunk Drive, 2 months jail; 1973, Campbell, Poss Toluene, \$25/6 months probation; 1973, San Jose, Revoked License, 2 months jail; 1973, Bakersfield, Drunk, \$65 or 5 days; 1973, Bakersfield, Warrant, Release O/R Los Banos; 1973, Campbell, Poss Toluene, No disposition; 1973, Campbell, Poss Toluene/Disturbing Peace, 4 months jail; 1973, Campbell, Walk Away, 180 days jail; 1974, Campbell, Poss Toluene, 3 days jail; 1974, San Jose, Warrant, Parole/Probation hold; 1974, San Jose, Assault/Battery/Theft, 4 months jail; 1975, Bakersfield, Warrant (San Jose), Released; 1975, San Jose, Poss C/S, Detained only; 1975, San Jose, Warrant-Theft, 45 days jail; 1975, San Jose, Pass C/S, Dismissed; 1976, San Jose, Warrant/Theft/Poss C/S Weapon, Insufficient evidence; 1976, San Jose, U/I C/S, Dismissed; 1976, San Jose, Pass Hypodermic/DUI Drugs, 60 days jail/\$250 fine.

1976, San Jose, DUI Drugs, 6 days jail/5 days suspended/\$500 fine/\$ 185 suspended 2 years probation; 1977, San Jose, Pass C/S, Insufficient evidence; 1977, San Jose, DUI/No License, No Disposition; 1977, San Jose, Resist Arrest, Plea Disorderly/5 days; 1977, San Jose, Resist Arrest/DUI/No License, No Disposition; 1977, San Jose, Murder, Dismissed; 1977, Campbell, Auto Theft/Resist Arrest, Auto Theft Dismissed, Resist Arrest - 5 days jail; 1977, San Jose, Voluntary Manslaughter, No disposition; 1978, San Jose, Warrant - DUI/No License, No disposition; 1978, San Jose, Warrant - No License, 30 days jail/\$130 fine; 1978, San Jose, Influence C/S, No disposition; 1978, San Jose, No License, Dismissed; 1978, San Jose, Influence C/S, No License, 90 days jail; 1979, San Jose, Murder, 25 to Life.

The above information was obtained from the State of California Department of Justice Bureau of Identification. pages 2 -through. 13.

In the current interview, when asking the inmate about his getting into trouble as a young man, the inmate states that he was hanging out in the streets with his friends. He feels that part of it was due to poverty. He said during that time period, also he did not want to be called a chicken and he was easily influenced by peers. He started getting in trouble about 10 years of age.

When asking the inmate why this crime occurred, he said alcohol clearly had a role in the crime. He said his wife's sister was terrified of the victim. The victim was very aggressive with her and she was terrified of him. The family was all upset and he was very close to the family and volunteered to talk to the victim. He said he went to the individual's house and confronted him with the situation. He had been drinking a lot. He said, "He came at

me with a knife. We wrestled over my gun and I shot him. I went there to talk to him and prevent future family problems."

The inmate goes on to say that he feels a lot of remorse and sadness regarding what happened.

When asking the inmate what has changed about him so that something like this will not happen again, he says that he is more mature. He is more serious. He said his whole frame of thought is different now. He is more courteous and more responsible and he tries to stay positive.

The inmate goes on to say he feels very fortunate that he has loved ones who care for him. He would like to be able to extend himself to them and do some volunteer work or charity work in the community.

XIV. ASSESSMENT OF DANGEROUSNESS:

In order to determine the inmate's risk of representing a substantial danger of physical harm to others, he was assessed on a number of research derived risk factors that are associated with an increased risk for future violence.

History of Violence:

According to the Probation Officer's Report and prior records, the inmate's criminal history would be an aggravating factor. In rating this individual on the historical factors, he would rate in the high range in terms of his likelihood to commit future violent acts when compared to other inmates with similar crimes. This rating is based on his age when he first acted out violent or was in a potential violent situation, his prior criminal record, being involved in unstable relationships, unstable employment, being a substance abuser, having early maladjustment problems and prior failures on supervision.

Prior Performance on Supervised Release:

This would be an aggravating factor.

Inmate's Compliance With Board Requests and Treatment:

The inmate has been discipline-free since 1993. He has upgraded himself educationally and vocationally. The inmate claims that he is active in his religion. This needs to be verified. The inmate has only done, however, 18 months in AA in the past. He is on the list currently to his credit. He also has only completed three self-help groups and is not in any right now.

Substance Abuse:

Relapsing in the use of alcohol and drugs is a concern. This has been a problem for the individual on the street and while incarcerated. Although he has been clean and sober for a number of years now, he has not been continuously involved in AA or NA, which he needs to be.

Mental Health Issues:

The inmate, at the current time, is placed in the general population and has never been in the mental health system. He does not appear to have any complicating mental health problems.

Clinical/Insight:

The inmate accepts responsibility for the crime. He does some insight and does express remorse. In rating this individual in the clinical factor, he would rate in the moderate range for future violence. This rating is based on the fact that the inmate has not been continuously involved in AA, NA or self-help, reflecting a possible negative attitude in this area. There also is a discrepancy between his account and the file account.

Environmental Risks/Risk Management:

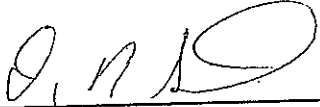
The inmate would rate in the moderate range in terms of his risk management for the future. Until 1993, the inmate had problems handling stress, compliance and destabilizers in the institutional environment. His parole plans need a little more development in terms of job offers. On the positive side, the inmate has been programming positively since 1993.

In summary, this individual's propensity to commit violence the future when compared to similar violent inmates has went down from the high range down into the moderate range at the current time. This rating will continue to decrease as the inmate is continuously involved in AA, NA and self-help.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS:

It is recommended that the inmate continue to be discipline-free. It is recommended that the inmate continue to program positively, vocationally and educationally. It is recommended that the inmate be continuously involved in his religion, self-help groups and AA or NA or both.

Thank you for the opportunity to assist in this interesting consultation.



RICHARD STARRETT, Ph.D., Ph.D.
Contract Psychologist, CA License PSY 13628
CTF Soledad State Prison

12-28-08
Date

RS/lc/cam

EXHIBIT “C”

LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
JUNE 2006 CALENDAR

ALVARADO, ANTONIO

C09142

I. COMMITMENT FACTORS:

A. Life Crime: Remains the same as stated in the previous hearing.

1. Summary of Crime: Remains the same as stated in the previous hearing.
2. Prisoner's Version: Remains the same as stated in the previous hearing.
3. Aggravating/Mitigating Circumstances:
 - a. Aggravating Factors: Remains the same as stated in the previous hearing.
 - b. Mitigating Factors: Remains the same as stated in the previous hearing.

B. Multiple Crime(s): None.

1. Summary of Crime: None.
2. Prisoner's Version: None.

II. PRECONVICTION FACTORS:

A. Juvenile Record: Remains the same as stated in the previous hearing.

B. Adult Convictions and Arrests: Remains the same as stated in the previous hearing.

C. Personal Factors: Remains the same as stated in the previous hearing.

III. POSTCONVICTION FACTORS:

ALVARADO, ANTONIO

C09142

CTF-SOLEDAD

JUN/2006

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
JUNE 2006 CALENDAR

2

- A. Special Programming/Accommodations: None noted.
- B. Custody History: Alvarado transferred from SATF III to CTF II, housed with the general population, assigned to PIA wood products.
- C. Therapy and Self-Help Activities: Alvarado is a member of the Alcoholics Anonymous program.
- D. Disciplinary History: Alvarado has remained disciplinary free for the last 13 years.
- E. Other: On 6/15/04, BPH made the recommendations to deny parole for two years, a new psych report, remains disciplinary free, and get self-help.

IV. FUTURE PLANS:

- A. Residence: Alvarado plans to live with his fiancé Eva Robinson at 2085 Sanunador Commons San Jose, CA (408) 297-2820.
- B. Employment: Alvarado plans to work in silk-screening, textiles or wood products in Santa Clara County.
- C. Assessment: Parole plans need more detail in employment plans.


V. USINS STATUS: Alvarado is a U.S. citizen.

VI. SUMMARY:


- A. Prior to release Alvarado could benefit from: getting self-help, and make better employment plans.
- B. This report is based upon 2 hours of research, an interview with Alvarado, and incidental contact.
- C. Alvarado reviewed his Central File on 7/10/06.
- D. No accommodation was required per the Armstrong vs. Davis BPH Parole Proceedings Remedial Plan (ARP) for effective communication.

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
JUNE 2006 CALENDAR


3

 9-1-06

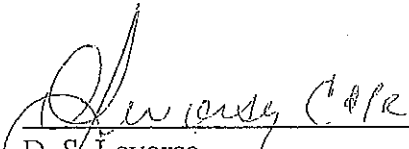
P.O. Taporco Date
Correctional Counselor I

 9/5/06

M. Arfa Date
Correctional Counselor II

 9/11/06

J.L. Clancy Date
Facility Captain

 9-11-06

D. S. Levorse Date
Classification and Parole Representative

BOARD OF PRISON TERMS

STATE OF CALIFORNIA


LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
10/03 to 10/04			<p>PLACEMENT: Remained at SOL III and housed with the general population.</p> <p>CUSTODY: Remains at Medium A.</p> <p>VOC. TRAINING: Alvarado received a certificate of completion in Vocational silk-screening on 2/4/00.</p> <p>ACADEMICS: Alvarado received his GED in 1982.</p> <p>WORK RECORD: Alvarado was assigned to the laundry room.</p> <p>GROUP ACTIVITIES: None noted.</p> <p>PSYCH. TREATMENT: None noted.</p> <p>PRISON BEHAVIOR: Alvarado has remained disciplinary free during this period of review.</p> <p>OTHER: On 6/15/04 BPH made the recommendations to deny parole for two years, get self-help.</p>
CORRECTIONAL COUNSELOR SIGNATURE			DATE
			9-1-06
ALVARADO	C09142	CTF-SOLEDAD	JUN/2006

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

CONTINUATION SHEET: LIFE PRISONER : POSTCONVICTION PROGRESS REPORT

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
10/04 to 10/05			<p>PLACEMENT: Remained at SOL III, and housed with the general population.</p> <p>CUSTODY: Remains at Medium A.</p> <p>VOC. TRAINING: Alvarado received a certificate of completion in Vocational silk-screening on 2/4/00.</p> <p>ACADEMICS: Alvarado received his GED in 1982.</p> <p>WORK RECORD: Alvarado was assigned to the laundry room.</p> <p>GROUP ACTIVITIES: None noted.</p> <p>PSYCH. TREATMENT: None noted.</p> <p>PRISON BEHAVIOR: Alvarado has remained disciplinary free during this period of review.</p> <p>OTHER: None noted.</p>

ORDER:

☐
☐

BPT date advanced by months.
PBR date advanced by months.

☐
☐

BPT date affirmed without change.
PBR date affirmed without change.

SPECIAL CONDITIONS OF PAROLE:

☐
☐
☐

Previously imposed conditions affirmed.
Add or modify
Schedule for Progress Hearing on appropriate institutional calendar

ALVARADO

C09142

CTF-SOLEDAD

JUN/2006

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

CONTINUATION SHEET: LIFE PRISONER : POSTCONVICTION PROGRESS REPORT

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
10/05 to 7/06			<p>PLACEMENT: Remained at SOL III and housed with the general population, 1/23/06, he was non-adversely transferred to CTF-II, and housed with the general population.</p> <p>CUSTODY: Remains at Medium A.</p> <p>VOC. TRAINING: Alvarado received a certificate of completion in Vocational silk-screening on 2/4/00.</p> <p>ACADEMICS: Alvarado received his GED in 1982.</p> <p>WORK RECORD: Alvarado is currently assigned to PIA wood products.</p> <p>GROUP ACTIVITIES: A CDC 128B dated 4/5/06 reflects that Alvarado is an active member of the AA program.</p> <p>PSYCH. TREATMENT: None noted.</p> <p>PRISON BEHAVIOR: Alvarado has remained disciplinary free during this period of review.</p> <p>OTHER: None noted.</p>

ORDER:

<input type="checkbox"/>	BPT date advanced by	months.	<input type="checkbox"/>	BPT date affirmed without change.
<input type="checkbox"/>	PBR date advanced by	months.	<input type="checkbox"/>	PBR date affirmed without change.

SPECIAL CONDITIONS OF PAROLE:

☐ Previously imposed conditions affirmed.

☐ Add or modify

☐ Schedule for Progress Hearing on appropriate institutional calendar

ALVARADO

C09142

CTF-SOLEDAD

JUN/2006

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

EXHIBIT “D”

Criminal
DEPT. No. 5 CASE NO. 67828

In the Superior Court of the State of California

IN AND FOR THE COUNTY OF SANTA CLARA

DUPLICATE ORIGINAL

ABSTRACT OF JUDGMENT (Commitment to State Prison as provided by Penal Code Section 1215.5)

The People of the State of California,

vs

ANTONIO ARMANDO ALVARADO,
Defendant.

Hon. PAUL T. GALLAGHER
(Judge of Superior Court)

RICHARD E. GARNER, ESQ.
(District Attorney)

DAVID JOHNSON, ESQ.
(Counsel for Defendant)

This certifies that on the 20th day of September, 1979 judgment of conviction of the above named defendant was entered as follows:

In Case No. 67828 Count No. ONE he was convicted by JURY on his plea of

Not Guilty

(guilty, not guilty, former conviction or acquitted once in jeopardy,

not guilty by reason of insanity); of the crime of VOLUNTARY MANSLAUGHTER

(designation of crime and degree, if any, including fact that it constitutes a second or subsequent conviction of same offense if that affects the sentence and if under Section 299 of the Penal Code whether victim suffered bodily harm);

in violation of California Penal Code Section 192.1

(reference to Code or Statute, including Section and Sub-section);

with prior convictions charged and proved or admitted as follows:

DATE	COUNTY AND STATE	CRIME	DISPOSITION
	NONE		

Defendant WAS charged and admitted being, or was found to have been armed with a deadly and did use a deadly weapon during the commission of the offense within the meaning of Penal Code Section 12022(b).

NOTE: Repeat below ALL of the foregoing factors with respect to each additional count of which defendant was convicted: (Additional pages if necessary.)

This certifies that on the 20th day of September, 1979 judgment of conviction of the above-named defendant was entered as follows:

In case No. 67828 Count No. THREE he was convicted by Jury; on his plea of _____
(Court or Jury)

Not Guilty (guilty, not guilty, former conviction or acquittal, once in jeopardy, not guilty by reason of insanity); of the crime of MURDER, FIRST DEGREE

(designation of crime and degree, if any, including fact that it constitutes a second or subsequent conviction of same offense if that affects the sentence and if under Section 209 of the Penal Code whether victim suffered bodily harm):
in violation of California Penal Code Section 187
(reference to Code or Statute, including Section and Sub-section):

with prior convictions charged and proved or admitted as follows:

DATE	COUNTY AND STATE	CRIME	DISPOSITION
	NONE		

Defendant was charged and admitted being, or was found to have been armed with a Firearm and did use a Firearm during commission of the offense within the meaning of Penal Code Section 12022.5.

This certifies that on the _____ day of _____, 19____ judgment of conviction of the above-named defendant was entered as follows:

In case No. _____ Count No. _____ he was convicted by _____; on his plea of _____
(Court or Jury)

_____ (guilty, not guilty, former conviction or acquittal, once in jeopardy, not guilty by reason of insanity); of the crime of _____

(designation of crime and degree, if any, including fact that it constitutes a second or subsequent conviction of same offense if that affects the sentence and if under Section 209 of the Penal Code whether victim suffered bodily harm):

in violation of _____
(reference to Code or Statute, including Section and Sub-section):

with prior convictions charged and proved or admitted as follows:

DATE	COUNTY AND STATE	CRIME	DISPOSITION

Defendant _____ charged and admitted being, or was found to have been armed with a deadly weapon at the time (was) or (was not) of commission of the offense, or a concealed deadly weapon at the time of his arrest within the meaning of Penal Code Sections 269c and 3024.

Defendant was not adjudged a habitual criminal within the meaning of Sub-division a or b of
 (was) or (was not) (a) or (b)
 Section 644 of the Penal Code; and the defendant is not a habitual criminal in accordance with Sub-division (c)
 (is) or (is not)
 of that Section.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the said defendant be punished by imprisonment in the State Prison of the State of California for the ~~term prescribed by law~~ ^{*** (See below)} and that he be remanded to the Sheriff of the SANTA CLARA County of SANTA CLARA and by him delivered to the Director of Corrections of the State of California at the place hereinafter designated.

It is ordered that sentences shall be served in respect to one another as follows:

COUNT ONE-Probation is Denied. State Prison for the term prescribed by law, said sentence to run consecutive to the sentence imposed on Count THREE.
COUNT THREE-Probation is Denied. The Court designates Count THREE as the Principal term. State Prison for a term of 27 years to Life (25 Years to Life on base charge plus 2 years enhancement for the Penal Code Section 12022.5 charge

and in respect to any prior incomplete sentence (s) as follows:

(NOTE whether concurrent or consecutive as to all incomplete sentences from other jurisdictions);

Defendant is credited for time spent in custody as follows:

COUNT ONE- 17 days Actual Local Time plus 4 days 4019(b)PC Credit

COUNT THREE- 202 days Actual Local Time plus 66 days 4019(b)PC Credit for a Total Credit of 289 days.

To the Sheriff of the SANTA CLARA County of SANTA CLARA and to the Director of Corrections:

Pursuant to the aforesaid judgment, this is to command you, the said Sheriff, to deliver the above-named defendant into the custody of the Director of Corrections at RECEPTION-GUIDANCE CENTER, VACAVILLE, CALIFORNIA at your earliest convenience.

Witness my hand and seal of said court

this 26th day of September 1979

JOHN KAZUBOWSKI

Clerk

by

A. J. VANER

Deputy

State of California,

County of SANTA CLARA

ss.

I do hereby certify the foregoing to be a true and correct abstract of the judgment duly made and entered on the minutes of the Superior Court in the above entitled action as provided by Penal Code Section 1213.

Attest my hand and seal of the said Superior Court this 26th day of September 19 79.

JOHN KAZUBOWSKI by A. J. VANER, Deputy

County Clerk and Ex-officio Clerk of the Superior Court of the State of California in and for the

SANTA CLARA

The Honorable:

PAUL T. GALLAGHER

Judge of the Superior Court of the State of California, in and for the County of

SANTA CLARA

EXHIBIT “E”

IN THE
SUPERIOR COURT OF THE
STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

VS.

Defendant,

ANTONIO ARMANDO ALVARADO

REPORT OF
ADULT PROBATION OFFICER

No. 67828

September 13, 1979

R. Gardner, P.A.

D. Johnson, P.D.

CHARGE: Count One, Section 192.1 of the Penal Code (Voluntary
Manslaughter) with a violation of Section 12022(b) of
the Penal Code (Armed With and Did Use a Deadly Weapon
During Commission of Offense) Found True

Count Three, Section 187 of the Penal Code (Murder),
First Degree, with a violation of Section 12022.5 of
the Penal Code (Use of Firearm During Commission of
Offense) Found True

DATE OF ARREST: Count One: June 24, 1977 (San Jose Police Dept.)

Count Three: January 7, 1979 (San Jose Police
Dept.)

DATE OFFENSE COMMITTED: Count One: June 23, 1977

Count Three: January 6, 1979

DAYS IN JAIL AT TIME OF REPORT: (Count One)

- 17 actual days (4 days 4019 PC);
- 21 total days; rel. pers. to Sec.
849(b) PC 6/24/77; rearr. 11/8/77,
rel. on bail 11/23/77.

(Count Three)

- 125 actual days (64 days 4019 PC);
 - 259 total days; pres. in cust.;
- (see supplemental info.)

PLEA OR CONVICTION: Found Guilty by Jury Trial 8/8/79 of Ct. 1,
Sec. 192.1 PC (Voluntary Manslaughter) a les-
ser included offense of Sec. 187 PC (Murder).

In the Case of: ANTONIO ALVARADO
Charge: Sec. 192.1 and 187 of P C
Santa Clara County Number: 67828

September 13, 1979

PLEA OR CONVICTION: (Continued)

with a viol. of Sec. 12022(b) PC (Armed With and Did Use a Deadly Weapon During Commission of Offense) found to be true; and Guilty of Ct. 1, Sec. 187 PC (Murder) Fixed at 1st Deg., with a viol. of Sec. 12022.5 PC (Use of Firearm During Commission of Offense) found to be true.

On 8/7/79, the special circumstances as to Ct. 1 were elim. by the Crt., and Ct. 2, Sec. 245(a) PC (Assault With a Deadly Weapon) was subm. to the jury as a lesser included offense under Ct. 1.

On 2/14/79, Ct. 4, Sec. 211 PC (Robbery) was ~~elim.~~ by the Crt.

AGE & DATE OF BIRTH: 33; December 31, 1946; Plainview, Texas

SUPPLEMENTAL INFORMATION:

The following is a summary of additional charges and dispositions against the defendant during his current incarceration:

On January 17, 1979, the defendant was ordered to serve two 30 day sentences (assumed to be concurrent) for violations of Section 14601a of the California Vehicle Code (Driving With Suspended License) by the San Jose Municipal Court. Those sentences were completed (good time and work time) on February 5, 1979.

On August 10, 1979, in the San Jose Municipal Court, the defendant was ordered to serve a 90 day County Jail sentence for violations of Section 11550 of the Health and Safety Code (Under the Influence of Heroin) and 23165 of the California Vehicle Code (Driving While Addicted to Heroin), and was ordered to serve an additional one year consecutive County Jail sentence for another violation of Section 11550 of the Health and Safety Code (Under the Influence of Heroin). He will complete those sentences, with good time and work time, on June 10, 1980.

The defendant is also scheduled for further proceedings on today's date on Superior Court Docket Number 71147, charging him with alleged violations of Section 11351 of the Health and Safety Code (Possession for Sale of Heroin) and 11550 of the Health and Safety Code (Under the Influence of Heroin), a misdemeanor.

In the Case of: ANTONIO ALVARADO
 Charge: Sec. 182.1 and 187 of P C
 Santa Clara County Number: 67828

September 13, 1979

INVESTIGATING OFFICERS' REPORT:

The following is a summation of offenses as noted in Counts One and Three above, as obtained from reports of the San Jose Police Department.

(Count One)

At approximately 11:45 p.m. on the evening of June 23, 1977, an altercation developed between victim Steven Romero (age 25 years) and defendant Alvarado at the defendant's residence at 984 Elm Street, Apartment 5, San Jose.

Victim Romero was able to gain entry to the defendant's residence by kicking through the front door, at which time he was confronted by Alvarado, who had obtained a butcher knife from the kitchen. The two fell onto the floor on the living room of the apartment and the defendant began stabbing at the victim, who apparently was unarmed. Victim Romero was able to free himself from the defendant's grasp and ran from the apartment, but was followed and again stabbed by the defendant in the parking lot of the apartment complex. (It was at this point that the fatal wound (a stab to the chest area which pierced the pulmonary artery) was inflicted.) End

Witnesses to the incident summoned the San Jose Police Department, who took the defendant into custody. One of these witnesses was later questioned and indicated that Billy Rome (victim in Count Three), a friend of the defendant, had indicated to her that the stabbing had occurred because the defendant owed the victim \$200 for some "reds", and that such incidents were not uncommon as "that was the way drug people are."

(Count Three)

On January 6, 1979, defendant Alvarado became intoxicated at the residence of his common-law-type wife (Christine Cortez), with members of her family, including her two brothers and her sister Alice Cortez, the former common-law-type wife of victim Billy Rome. Alice was residing in their house after leaving the victim as a consequence of a fight in which she had been struck by the victim. As the defendant became increasingly inebriated, he began to make threats against victim Romero, indicating that he planned to kill him. These threats were not taken seriously by members of the Cortez family, however, since the defendant reportedly frequently made such threats when under the influence of alcohol or drugs.

In the Case of: ANTONIO ALVARADO
 Charge: Sec. 182.1 and 187 of P C
 Santa Clara County Number: 87828

September 13, 1979

INVESTIGATING OFFICERS' REPORT: (Continued)

At approximately 7:00 p.m. on the above date, ~~the defendant~~ began to display a loaded .22 caliber pistol, which he had indicated was previously used in a killing by the Nuestra Familia which had been given to him for disposal. ~~The defendant left~~ the residence with the gun and returned a short time later, bragging that he had "just shot Billy eight times." He then entered the bathroom of the residence where he began to inject heroin into his arm.

~~Members of the Cortez family~~ subsequently ~~went to the residence of the victim~~ at 767 East Julian Street in San Jose, ~~where they found him lying on the living room floor with numerous bullet wounds.~~ Police and ambulance units were summoned to the scene, but ~~the victim was found to be dead, from what was later determined to be multiple gunshot wounds.~~ It should be noted that a later analysis of the victim's blood was found to be positive for the presence of phencyclidine. A search of the residence uncovered a hypodermic syringe, a needle, possibly containing heroin, two .22 caliber rifles and ammunition.

~~The defendant was~~ subsequently ~~apprehended~~ at approximately 12:30 a.m. ~~on January 7, 1979~~ after running a red light in a vehicle in the downtown San Jose area. He was initially released with the instruction to walk home, but was subsequently apprehended after radio broadcasts listing him as a suspect in the above offense were aired. He offered no resistance at the time of his apprehension and a subsequent blood sample revealed a .23 percent level of alcohol as well as the presence of morphine in his system.

In further questioning of witnesses and family members, it was learned that victim Billy Romo had joined the Nuestra Familia gang while in prison but had subsequently been attempting to disassociate himself from the group following his release on parole. The victim had a large tattoo covering his entire back with the emblem of the Nuestra Familia. Witnesses indicated that it was known that the two disliked one another and had possibly had arguments over drugs. Other information was developed which indicated the defendant was also a former member of the Nuestra Familia who may have been attempting to regain his status with the gang through the killing. The defendant refused to provide any information regarding the offense, denying his guilt.

DEFENDANT'S STATEMENT:

The defendant refused to meet with the probation office to discuss the offense or to provide his social history. The following infor-

In the Case of: ANTONIO ALVARADO
 Charge: Sec. 191.1 and 187 of P C
 Santa Clara County Number: 67828

September 13, 1979

DEFENDANT'S STATEMENT: (Continued)

mation was obtained from prior probation referrals as well as police reports on the present offenses.

FAMILY HISTORY:

The defendant was born to Antonio and Felipa Alvarado on December 11, 1946, in Plainview, Texas. His father subsequently died in 1947 and his mother married a Mr. Lupe Estrada, with whom she moved to California in 1949. The defendant has four brothers, Ruben, age 27 years, Raymond, age 25 years, Richard, age 22 years, and Sammy, age 22 years. At last report, these brothers, as well as his two sisters, Yolanda, age 19 years and Marilon, age 19 years, all live in the Bakersfield area, as do his mother and stepfather.

In 1968, the defendant entered into a common-law-type relationship with a Ms. Eva Robinson, by whom he has one son, Antonio, now age 10 years. That relationship terminated some time prior to 1976, when he then entered into a common-law-type relationship with Ms. Christina Cortez, by whom he now has a one two and one-half month old child. The defendant was living with Ms. Cortez at 450 North Fifth Street, Apartment 4, San Jose, at the time of the present offense.

Records indicate that the defendant discontinued his education after completing the 11th grade at East Bakersfield High School in Bakersfield, California, at the age of 17 years. He moved to Santa Clara County in 1972.

WORK RECORD:

The defendant's only two known periods of employment were as a general laborer on a poultry farm in Bakersfield, California, prior to 1970 for approximately one and one-half years, and as a cannery worker in San Jose for an undetermined period of time in 1974. His source of income at the time of the present offense is unknown.

The defendant has no military history.

PRIOR RECORD: CIL#: a 222 268 (Attached)

SS#: 563-64-8126

In the Case of: ANTONIO ALVARADO
Charge: Sec. 192.1 and 197 of F C
Santa Clara County Number: 67828

September 13, 1979

INTERESTED PARTIES:

The undersigned contacted Alice Romo, who resided in a common-law-type relationship with victim William Romo, (Count Three), until shortly before the present offense. Ms. Romo (true name Cortez) indicated that she had no specific comments for the Court regarding sentencing other than that she hopes the defendant is incarcerated for a substantial period of time.

Efforts to contact relatives of victim Romero met with negative results.

DISCUSSION:

Rule 414: Criteria Affecting Probation

(Count One - Not applicable)

(Count Three)

(a) The defendant is ineligible for probation due to the finding of use of a firearm pursuant to Section 12022.5 of the Penal Code.

(b) Based upon the nature of the present offense and the defendant's prior arrest record, it can be concluded that he is a danger to others if not imprisoned.

(c) (1) The nature of the offense is so serious as to preclude consideration for probation.

(c) (2) The victim lost his life as a consequence of the present offense.

(c) (3) The defendant used a deadly weapon during the commission of the offense.

(c) (4) The defendant inflicted bodily injury upon the victim.

(c) (5) It appears from the defendant's statements prior to the commission of the offense that it was planned and, in fact, carried out despite the admonitions of others.

(c) (6) It appears that the offense was carried out without great provocation, and given the defendant's background, could potentially recur in the future.

(c) (7) Although criminal sophistication cannot be attributed to the defendant's actions, the almost casual manner in which the act

In the Case of: ANTONIO ALVARADO
Charge: Sec. 182.1 and 187 of P C
Santa Clara County Number: 67828

September 13, 1979

DISCUSSION:

Rule 414: Criteria Affecting Probation: (Continued)

was carried out can be attributed to his significantly ingrained criminal orientation.

(c) (8) It can be concluded that the defendant took advantage of his relationship and near family ties with the victim to gain entry to the apartment.

(d) (1) The defendant's lengthy and increasingly serious prior record demonstrates his potential for a serious threat to the community.

(d) (2) The defendant has failed on previous orders for probation and drug diversion.

(d) (3) The defendant refused to cooperate with the probation department in the discussion of the present offense and in past proceedings on other offenses.

(d) (4) The defendant has not completed his education, is apparently a narcotics addict and has unstable family ties.

(d) (5) The defendant has a poor employment history and it appears that his support may have been derived from criminal activities.

(d) (6) The defendant has a long-standing history of abuse of alcohol and narcotics.

(d) (7) In view of his minimal support to his family members, his incarceration would pose no realistic hardship upon his dependents.

(d) (8) The defendant has already established a serious arrest record including numerous felonies.

(d) (9) In view of his unwillingness to discuss the offense with the probation department, it has not been possible to determine if he is remorseful.

(d) (10) Restitution to the victim is not a consideration.

Rule 421: Circumstances in Aggravation

(Count One - Not applicable)

(Count Three - Not applicable)

In the Case of: ANTONIO ALVARADO
 Charge: Sec. 192.1 and 187 of P C
 Santa Clara County Number: 67826

September 13, 1979

DISCUSSION:

Rule 423: Circumstances in Mitigation

(Count One - Not applicable)

(Count Three - Not applicable)

Enhancements:

(Count Three)

A violation of Section 12022.5 of the Penal Code (Use of Firearm) was found true as to this count, thereby requiring a period of imprisonment to be enhanced by two years.

Case Evaluation:

It can be reasonably concluded from a review of the defendant's prior arrest record (dating from a commitment to the California Youth Authority for burglary at age 10 years), his chronic and almost random use of all forms of intoxicants (including alcohol, glue, depressants and heroin), his possible affiliation with prison gangs, and his obvious disregard for the value of human life, that he is of such a serious threat to the community that he should be incarcerated for the remainder of his life. Mr. Alvarado is somewhat unique in that there is absolutely nothing in his life that this officer can interpret as being a positive contribution to society, with the possible exception of his fathering of two children, for whom he has apparently never provided any support.

In view of the above, as well as the fact that each of the present offenses was committed completely independent of one another and each resulted in the loss of human life, it is felt that consecutive commitments to the Department of Corrections are appropriate.

All indications are that the defendant has no ability to pay a fine pursuant to Section 13967 of the Government Code.

SUGGESTED PRISON TERM:

<u>CRIME</u>	<u>MITIGATED</u>	<u>AGGRAVATED</u>	<u>BASE TERM</u>	<u>ENHANCEMENTS</u>	<u>TOTAL TERM</u>
(Ct. 3) 187 PC, 1st Deg.	N/A	N/A	25 years to life	2 years (12022.5 PC)	27 years to life

In the Case of: ANTONIO ALVARADO
Charge: Sec. 192.1 and 187 of P C
Santa Clara County Number: 67828

September 13, 1979

RECOMMENDATION:

(Count Three)

Probation be denied, a two year enhancements be imposed, the defendant be committed to the California Department of Corrections for a period of 27 years to life, and be advised of a subsequent period of five years parole supervision.

(Count One)

Probation be denied, and the defendant be committed to the California Department of Corrections, to be served consecutively to Count Three.

Respectfully submitted,

WALTER D. MORSE
Chief Adult Probation Officer

J. Ronald Metz, Deputy
Adult Probation Officer

JRM:arh
Attachments

Reviewed by:

Supervising Adult
Probation Officer

The above report has been read and considered by the Court.

PAUL T. CALLAGHER
Judge of the Superior Court
Santa Clara County, California

SANTA CLARA COUNTY
 LT PROBATION INTERVIEW SHEET

Date Prepared _____
 Prob. Officer TB

Court No. 67828
 Date Due 8-30-79
 Time Due 11:00
 Judge Gallagher

Name Antonio ARMANDO ALVARADO

Aka "Playboy"

Address 187 PC 1st 12022.5 450 N 5th St 41

Charge 192.1 W. 12022(b) PC Plea or Conviction 82-8-79 Jury Verdict

Date of Arrest CT 11/5/77 83-11/7/79 Arr. Agency SJPD

Where Arrested SJ Bail In

Co-def., Accomplices none

Attorney P.D. Johnson D.A. GARNER

Name, Address of Complaining Witness _____

Local Relatives, Friends _____

Date of Birth 12/31/46 Age _____ Birthplace Plain View, Tex

Father's Name Antonio Alvarado Mother's Maiden Name Isabel Alvarado
decd 1947 remarried 1965

Parents Address, Marital Status _____

Mother remarried - reside in Berkeley 1965

Brother's Name, Address Ruben Alvarado 27 - years Berkeley

Raymond 25, Richard - 23, Henry 22
Berkeley

Sister's Name, Address Yolanda Nee 30 yrs - married - Berkeley
Mary Lou 19, Berkeley

Marriages, Common-law, Dates, Maiden Name

(1) Christine Cortez age 25 yrs 1976 - present

(2) Carol 1968 common law until 1976
Robertson

(3) _____

Separated, Divorced - Date

(1) _____

(2) _____

(3) _____

Children - Sex, Address (1) one - 2 boys grand & living

(2) one age 10

(3) _____

(4) _____

BEST AVAILABLE
 COPY

County Aid _____ No. _____ Cr. Support _____

Education 11th grade City East Palestine Age Left 17 yrs

Came to U.S. _____ State 30 yrs County 7 yrs Citizen _____

Occupation Convey work Union Member _____

Present Employment _____ Dates _____ Wage _____

Previous Employment (1) _____

(2) NCC Convey ST. 3 weeks 1974

(3) Porter Farm 1974-1975 2 yrs

Other Sources of Income none Soc. Sec. No. 563-64-8156

Military Record none Date of Enlistment _____

Discharge _____ Type _____

Courts Martial _____

Over-Seas Service _____ Service No. _____

Comment Re: Prior Arrest _____

Hold for Other Agencies _____

Vehicle _____ Lic. No. _____ Oper. Lic. PA P 0925924

C.I.I.
I.D. No. 1222268 FBI No. 122834F DMV No. _____

Height 5'8" Weight 140 Eyes BR Hair BF

STATEMENT OF ACT:

aka. Rms 250-0354

EXHIBIT “F”

Court of Appeal, Sixth Appellate District - No. H032389
S160344

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ANTONIO A. ALVARADO on Habeas Corpus

The petition for review is denied.

Moreno, J., was absent and did not participate.

**SUPREME COURT
FILED**

MAR 12 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

EXHIBIT “G”

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.
FILED

JAN 15 2008

MICHAEL J. YERLY, Clerk

By _____
DEPUTY

In re ANTONIO A. ALVARADO,
on Habeas Corpus.

H032389
(Santa Clara County
Super. Ct. No. 67828)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Bamattre-Manoukian, Acting P.J., Mihara, J., and McAdams, J.,
participated in this decision.)

Dated JAN 15 2008 BAMATTRE-MANOUKIAN, J. Acting P.J.

EXHIBIT “H”

(ENDORSED)
FILED
NOV 16 2007

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
BY 

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

In re

ANTONIO A. ALVARADO,

On Habeas Corpus

No.: 67828

ORDER

ANTONIO A. ALVARADO, hereinafter Petitioner, has submitted to the Superior Court a habeas corpus petition in which he asserts the Parole Board violated his due process rights when it denied him parole.

While the Board may have committed error in failing to explain why it categorized Petitioner's life offense exceptional, the Board's reliance on Petitioner numerous other crimes presently still supports a parole denial. Accordingly, the petition is denied.

DATED: ^{MS} 11/16, 2007


ARTHUR BOCANEGRA
JUDGE OF THE SUPERIOR COURT

cc: Petitioner
Attorney General
Research (10-5A)
CJIC

<p align="center">THE SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA</p> <p><u>Plaintiff:</u> PEOPLE OF THE STATE OF CALIFORNIA</p> <p><u>Defendant:</u> ANTONIO A. ALVARADO</p>	<p align="center">(ENDORSED) FILED</p> <p align="center">NOV 16 2007</p> <p>KIRI TORRE Chief Executive Officer/Clerk Superior Court of CA, County of Santa Clara BY <u>R. Loza Garcia</u> DEPUTY</p>
<p>PROOF OF SERVICE BY MAIL OF: ORDER IN RE: RESTITUTION ORDER</p>	<p>CASE NUMBER: 67828</p>

CLERK'S CERTIFICATE OF MAILING: I certify that I am not a party to this case and that a true copy of this document was mailed first class postage fully prepaid in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA on NOVEMBER 16, 2007. I declare under penalty of perjury that the foregoing is true and correct.



KIRI TORRE, Chief Executive Officer/Clerk

By R. Loza Garcia Deputy
R. LOZA-GARCIA

ANTONIO ARMANDO ALVARADO
CORRECTIONAL TRAINING FACILITY
P.O. BOX 689 / EAST DORM 134-LOW
SOLEDAD, CA. 93960-0689

Research Attorney Criminal Division
190 W. Hedding Street
San Jose Ca. 95110

Placed in Research Attorney pick up box at HOJ

Office of the District Attorney
70 West Hedding Street
San Jose, Ca 95110

CJIC

Placed in District Attorney pick up box at HOJ

PROOF OF SERVICE BY MAIL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Antonio Alvarado
Petitioner,
v.
Ben Curry,
Respondent.

Case No. _____

PROOF OF SERVICE

_____/

I hereby certify that on May 08, 2008, I served a copy of the attached PETITION FOR WRIT OF HABEAS CORPUS by placing a copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the United States Mail at Bakersfield, California, 93306.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division
450 Golden Gate Avenue
San Francisco, CA.
94102-3483

I declare under penalty of perjury that the foregoing is true and correct.


Yolanda Neri

929 Chelsea
Bakersfield, CA. 93306

For Petitioner Antonio Alvarado

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Antonio Alvarado
Petitioner,

v.

Case No. _____

Ben Curry,
Respondent.

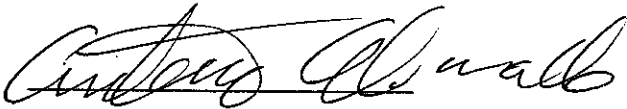
PROOF OF SERVICE

_____/

I hereby certify that on April 28, 2008, I served a copy of the attached PETITION FOR WRIT OF HABEAS CORPUS by placing a copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the United States Mail at Soledad, California, 93960-0689

YOLANDA NERI
929 Chelsea
Bakersfield, CA.
93306

I declare under penalty of perjury that the foregoing is true and correct.



Antonio Alvarado, C-09142

Petitioner in Pro Se